TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted]68

MARION W. SAVAGE, APPELLANT,

vs.

WILLIAM J. JONES, JR., STATE CHEMIST OF THE STATE OF INDIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED JUNE 12, 1906.

(21,721.)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 18, 1911.

1 Pleas of the Circuit Court of the United States for the District of Indiana, Begun and Holden at the United States Court House, in the City of Indianapolis, in said District, on the First Tuesday in May, in the Year of Our Lord One Thousand Nine Hundred and Nine, Before the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana, and ex officio Judge of said Circuit Court.

No. 10786. Chancery.

MARION W. SAVAGE
vs.
WILLIAM J. JONES, Jr., State Chemist of the State of Indiana.

Be it remembered that heretofore, to-wit, at the November Term of said Court, on the 14th day of April, 1908, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, towit:

Comes now the complainant by M. H. Boutelle, Esq., and Messrs. Miller, Shirley & Miller, his solicitors, and files his bill of complaint herein, in the words following, to-wit:

To the Honorable Judges of the Circuit Court of the United States for the District of Indiana:

Marion W. Savage of Minneapolis in the State of Minnesota, brings this his bill of complaint against William J. Jones, Jr., as the state chemist of the State of Indiana, and thereupon your orator complains and says:

That your orator is a resident and citizen of the State of Minnesota; that the defendant herein, the said William J. Jones, is a resident and citizen of the State of Indiana; that the amount in dispute herein exceeds exclusive of interest and costs the sum or value of two thousand dollars.

I. And your orator further says that on or about the 15th day of December, 1884, he commenced the manufacture of veterinary medical preparations at the City of Dubuque in the State of Iowa; that he subsequently moved to the State of Minnesota and on or about the 15th day of November, 1889, commenced the manufacture and sale of medicinal preparations, one of which has ever since been known and called "International Stock Food" and is now sold in every State in the Union as well as in many foreign coun-
2 tries; that he has conducted said business under the name of the International Stock Food Company but he holds himself out to the public and is well known and understood to be and is the owner and proprietor of said business.

II. Your orator further shows that for nearly twenty years last past he has invested large amounts of money in building up and thoroughly establishing in the State of Indiana a large and lucrative

trade among the retail druggists and others in said State in said medicinal preparation and at present there are many hundreds of retail druggists and others within said State who are buying, carrying in stock and retailing to the public the medicinal preparations so manufactured and sold by your orator as aforesaid; that your orator's gross annual sales in the State of Indiana amount to many thousands of dollars; that said International Stock Food possesses valuable and effective curative properties and effects cures of various diseases of domestic animals, purifies the blood and tones up and strengthens the entire system and aids digestion of such animals so that they obtain more nutrition from grains while kept on dry food; said preparation is composed of various finely powdered medicinal roots, herbs, seeds and barks, but the proportions of said ingredients to each other and the manner of combining them is by a secret formula known to your orator and discovered by him through his knowledge as a druggist, combined with his knowledge acquired as a stock breeder and after experimenting on his own stock for a considerable period of years; such secret formula is of great value to your orator because it is a secret obtained at great expense through many years of experimenting and because the medicinal preparation so made by this formula has very peculiar and valuable curative properties, as absolutely proven by over twenty years' sales and use throughout the entire world, and the disclosure to the com-
3 petitors of your orator of the proportion of the ingredients in said preparation and the manner of combining the same would greatly damage and injure the business of your orator in which he has invested at the present time over one million dollars.

III. That because of the great value of said medicinal preparation as a medicine for the curing of diseases, purifying the blood, and toning up the system of domestic animals, it has come to be used very extensively by the public throughout the United States as well as throughout the State of Indiana and the good name and fame of said medicinal preparation is of very great value to your orator; that the commercial or trade name "International Stock Food" is neither used by your orator nor taken to be by retail druggists and those who purch-se and use said medicinal preparation as descriptive of foods or feed of any kind, but it is claimed by your orator to be and is well known to the public as merely a trade name and is exclusively used by the public as a medicine for domestic animals; that said trade name is protected under trade marks issued by the United States Government, first in 1893, and subsequently in 1906, under the medicinal classification.

Your orator further states that a similar trade name has been used for a similar medicinal preparation manufactured in England and that said trade names are known throughout the entire world as being applied to medicinal preparations.

IV. Your orator further states that the United States Internal Revenue Department made a thorough investigation in 1889 of your orator's business and then held and determined that the prepa-
ration manufactured by your orator under the trade name of
4 International Stock Food was a medicinal preparation and that your orator must pay the patent medicine revenue tax

thereon as required by the War Tax Law of 1863 which said tax was paid by your orator until said law was repealed.

Your orator further shows that the United States Internal Revenue Department made a thorough investigation of the business of your orator in 1893 and thereupon held and determined that the preparation so manufactured by your orator under the trade name of International Stock Food and sold by your orator was not feeding stuff nor a stock food nor a condimental stock food but was a proprietary or patent medicine within the meaning of the so called War Revenue Laws of 1898 and under said ruling your orator paid in revenue for said preparation to the United States Government upwards of forty thousand dollars.

Your orator further states that under the rulings made by the United States Internal Revenue Department in 1898, condimental stock foods so called were not subject to revenue tax. That subsequent to the enactment by Congress of the United States of the law commonly known as the Pure Food and Drug Act of 1906 the administrative officers of the United States Government charged with the duty of making investigations, and classifying various articles of food and medicine and making rules for the enforcement of said act, carefully investigated the preparation manufactured and sold by your orator under the name and style of International Stock Food, as aforesaid, and duly determined that the same was a medicine and not a food within the meaning of that act.

V. Your orator further shows that the Legislature of the State of Indiana at its 1907 session passed an act "to provide for the inspection and analysis of, and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana; to prohibit the sale of fraudulent or adulterated concentrated commercial feeding stuffs; to define the term concentrated commercial feeding stuffs; to provide for the guarantees of the ingredients of concentrated commercial feeding stuffs; for the affixing of labels and stamps to the packages thereof, as evidence of the guarantee and inspection thereof; to provide for the collection of an inspection fee from the manufacturer of, or dealers in concentrated commercial feeding stuffs; to fix penalties for the violation of the provisions of this act, and to authorize the expenditure of the funds derived from the inspection fees," which act was approved March 9, 1907. That it is provided by section 1 of said last mentioned act, "That before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Indiana, the manufacturer, importer, dealer, agent or person who causes it to be sold, or offered for sale, by sample, or otherwise within this State, shall file with the state chemist of Indiana at the Indiana agricultural experiment station, Purdue University, a statement that he desired to offer such concentrated commercial feeding stuff for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, the ingredients from which the con-

centrated commercial feeding stuff is compounded and the minimum percentage of crude fat and crude protein," etc.

That section 2 provides, among other things that "any
6 person, company, corporation or agent that shall sell or offer, or expose for sale, any concentrated commercial feeding stuff in this state, shall affix, or cause to be affixed to every package or sample of such concentrated commercial feeding stuff in a conspicuous place on the outside thereof, a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuff, in the package, the name, brand or trademark under which the concentrated commercial feeding stuff is sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis stating the minimum percentage of crude fat and crude protein, determined as described in section 1, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent, shall also affix the stamp purchased from the state chemist, showing that the concentrated commercial feeding stuff has been registered as required by section 1 of this act, and that the inspection tax has been paid."

That when concentrated commercial feeding stuff is sold in bulk a tag as hereinbefore described, and a state chemist stamp shall be delivered to the consumer with each one hundred pounds, or fraction thereof; provided, that for wheat bran a special stamp covering fifty pounds shall be issued on request, and one such stamp, attached to the tag hereinbefore mentioned, shall be delivered to the purchaser with each fifty pounds or fraction thereof."

That it is provided by section eight of said act that "any person
7 who shall prevent or strive to prevent the state chemist, or any person deputized by the state chemist from inspecting and obtaining samples of concentrated commercial feeding stuff, as provided for in this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense."

That section 9 provides that "the state chemist is hereby empowered to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted for concentrated commercial feeding stuffs. The state chemist is further empowered to refuse to issue stamps or labels to any manufacturer, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in this state and refuse to submit the sworn statement required by section 4 of this act."

That by section 11 of said act "the term concentrated commercial feeding stuff" as used in this act, is declared to include "linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, dairy feeds, starch feeds, sugar feeds, dried brewers' grain, malt sprouts, dried distillers' grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood,
8 blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, * * * and mixed meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds."

VI. Your orator further shows that said defendant, William J. Jones, is the state chemist of the State of Indiana, and that he is claiming, asserting and pretending that the preparation so manufactured and sold by your orator within the State of Indiana is one of such concentrated commercial feeding stuffs as are mentioned in and covered by said act, and that it is the duty of your orator to comply with the terms and provisions of said act with reference to the sale of his preparation aforesaid within the State of Indiana, and has stated and declared to your orator, and now threatens that unless your orator has attached in a conspicuous place on the outside of each package of your orator's said medicinal preparation offered for sale within the State of Indiana, a printed statement, clear and truthful, certifying among other things the name of the manufacturer and shipper, the place of manufacture, the place of business and chemical analysis stating the percentage of crude protein, crude fat and crude fiber contained in said preparation and have all its constituents determined by the methods adopted by the session of official agricultural chemists, and shall also state upon said package the names of each ingredient of which said preparation is composed, he will cause the arrest and prosecution of every person dealing or trading in the medicinal preparation of your orator within the State of Indiana.

VII. That said International Stock Food so prepared and
9 manufactured by your orator has for many years enjoyed a wide reputation and sale within the State of Indiana where there has for many years been an increasing demand among farmers, stock breeders and dealers therefor, among whom plaintiff has built up and now enjoys a large and profitable business.

That many hundreds of retail dealers in the State of Indiana are now engaged, and have for years been engaged, in the sale of said preparation and will continue to handle same in the future if not interfered with by the defendant and those operating with him and under his directions.

That said defendant has sent, or caused to be sent, broadcast throughout the State of Indiana to dealers and others who are customers, directly and indirectly, of plaintiff, many thousand circular letters warning them against the sale of said preparation, and threat-

ening that prosecutions will be instituted against all persons engaged in the sale thereof, unless and until plaintiff shall have complied with the provisions of said act, as above stated.

And your orator further shows that the sales made by your orator in the State of Indiana are made at the city of Minneapolis, State of Minnesota, to be delivered free on board of cars at Minneapolis, Minnesota, and delivered to purchasers and consumers within the State of Indiana in the original unbroken packages, freight being paid thereon by the consumers and purchasers.

VIII. Your orator further shows that unless restrained and enjoined by the order of this Court said defendant will continue to harrass, annoy and intimidate the numerous persons engaged
10 in selling said preparation in the State of Indiana, by threats of criminal prosecution, as aforesaid, and will report to the various prosecuting attorneys of the State of Indiana any and all sales of your orator's said preparations that may come to his notice and procure prosecutions of the persons selling the same as alleged violators of said statute, and will thereby greatly disorganize, interfere with and obstruct plaintiff in the conduct of his business in the State of Indiana, causing him great financial loss, interfering with his property rights in said preparation, and the right to vend the same freely in the State of Indiana, and will thereby inflict great and irreparable injury upon the plaintiff which it will be impossible to compensate in damages or to accurately ascertain, and for which there is no adequate legal remedy. That the many hundreds of persons so engaged in selling plaintiff's said preparation have already discontinued their purchases and sales of said preparation because of the fear of criminal prosecution induced by the threats of said defendant, as aforesaid and that large numbers of those who are yet handling said preparation and are yet buying and selling same in said state will be hereafter induced by such threats to discontinue the sale thereof unless defendant is restrained, as aforesaid, from further circulation of such threatening literature and from all other acts calculated to induce plaintiff's said customers to believe that by purchasing and selling said preparation they expose themselves to such threatened prosecution.

IX. Your orator further shows that the medicinal preparation manufactured and sold by him, as aforesaid, is not in any sense either concentrated commercial feeding stuff or a condimental stock feed or a patented or proprietary stock feed within the true
11 meaning and proper construction of said act of the legislature of the State of Indiana, nor is it claimed or advertised by your orator that it possesses nutritive properties, nor is it used nor intended to be used nor understood by those purchasing and using it, to be intended as anything except a medicine, being a general tonic and blood purifier for domestic animals; nor does your orator claim that said medicinal preparation contains any crude protein or crude fat; nor does said preparation contain any ingredient that is deleterious or injurious to animal life or health; nor is it claimed on behalf by said defendant that said preparation contains any such injurious or deleterious substance.

Your orator further shows that the preparation so manufactured and sold by him is prescribed for use by him and administered by those who use the same in small doses as medicine, and not in quantities sufficient to have an appreciable effect as feed; that the only nutritive substance or ingredients contained in said preparation are employed as diluents in so small an amount as to produce no feeding effect whatever, and for the sole purpose of rendering medicinal bitter roots, herbs, barks and seeds more acceptable to the animal stomach in so far, and for the same purpose as the druggist uses water, alcohol, syrups and other substances as diluents to make medicinal ingredients more acceptable to the human stomach, which facts are well known and understood by said defendant. But that he is asserting and publishing that notwithstanding, such facts said act of 1907 applies to said medicinal preparation and threatens to and will proceed accordingly unless restrained as aforesaid.

That on the outside label of all small packages of all kinds, in which said medicinal preparation is sold, and in a direction
12 book placed inside of every large package are printed directions for the administration of said medicine in tablespoonful doses to be mixed with the ordinary ground feed or mill feed of domestic animals.

And your orator further shows that upon every package and box containing any of said medicinal preparation so manufactured and sold by your orator, is a statement plainly showing that said goods are to be used to cure diseases of domestic animals, and not in place of or as a substitute for any grain or any feed of any kind, but that the same is purely a vegetable medicine and so understood by the public generally.

X. Your orator further shows that the language of said act of the legislature of the State of Indiana does not purport to apply to medicinal preparations generally, nor in any way undertake to regulate the manufacture and sale thereof. Yet said defendant, who is the state chemist of the State of Indiana, as aforesaid, and in his said official capacity charged by law with the enforcement of said statute, has so construed and interpreted said statute as to apply the same to, and affect the medicinal preparation of your orator, as aforesaid, and as interpreted by said defendant said act has been and is used for the purpose of depriving, and will deprive plaintiff of his property in the formula used and employed in the manufacture of said preparation which is of great value, and is a trade secret to which plaintiff is exclusively entitled, as aforesaid, and will deprive your orator of his property in said formula and trade secret without due process of law in violation of section 1, Article XIV of the Constitution of the United States, and will if applied and administered, as aforesaid, also deprive said plaintiff of his right to vend and
13 sell said property in the State of Indiana, which right is of itself property of great value, all without due process of law, and in violation of said section 1, of Article XIV of the Constitution of the United States as aforesaid.

XI. Your orator further states and shows to the Court that it is

provided by section 3 of said act that the State Chemist shall register the facts set forth in the certificate required by section 1 of said act as a permanent record, and shall furnish stamps or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered, at such times and in such numbers as the manufacturers or agents may desire; but that it is provided in and by the terms of the section herein mentioned that the State Chemist shall not be required to sell such stamps or labels in less amounts than to the value of five dollars or multiples of five dollars for any one such concentrated commercial feeding stuff. And it is further provided that the State Chemist shall not be required to register the certificate required by Section 1 of the Act, unless the request for such registration is accompanied by an order and fees for stamps or labels to the value of five dollars or some multiple of five dollars. That it is further provided by section 5 of said act, among other things, that said State Chemist shall receive for stamps or labels furnished and supplies, as provided by the terms of said act, the sum of one dollar for each 100 stamps, and that the proceeds derived from the sale of such stamps shall be paid into the treasury of the Indiana Agriculture Experiment Station, the same to be expended in carrying out the provisions of such act, and for any other expenses of such Indiana Agriculture Experiment Station as authorized by law.

14 XI½. Your orator further avers that said act of the General Assembly of the State of Indiana, and particularly sections 1, 2, 7, 8 and 9 thereof are void, because contrary to and in violation of so much of section 1, Article XIV of the Constitution of the United States as provides that no State shall "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law;"

In this that said act and each of said sections purport to require manufacturers and producers of proprietary stock feeds and condimental feeds arbitrarily and without compensation and without due process of law whether such preparations do or do not contain any poisonous or deleterious element or ingredient to disclose the formulæ by which such preparations are compounded, and the ingredients and the proportions thereof, which formulæ embody valuable trade secrets and secret processes belonging to the various discoverers and owners thereof, and the manufacturers of such preparations; and that if enforced against this complainant, said act and each of said sections thereof will deprive him of his property in the secret formula under which his said preparation is manufactured without compensation and without due process of law and in violation of said portion of section 1 of Article XIV of the Constitution of the United States, as aforesaid;

And that said act and each of said sections thereof are also in violation of so much of section 8 of Article I of the Constitution of the United States as confers upon the Congress of the United States power "to regulate commerce with foreign nations and among the several states and with the Indian tribes," in that said act and each

of said sections will, if enforced, unreasonably interfere with
15 commerce between the several states and will, as hereinbefore alleged, interrupt and destroy the Interstate Commerce in which said complainant alleges he is largely engaged, as aforesaid.

Your orator further avers that said act and each of said sections thereof are void because the same are contrary to and in violation of section 19 of Article IV of the Constitution of the State of Indiana, which requires that "every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title," etc.; in this, that it is no where expressed in the title of said act that the same requires or purports to require the manufacturers or dealers in preparations therein embraced to disclose or publish the formulæ upon which their respective products are manufactured or the ingredients or proportions thereof.

XII. Your orator further shows and states to the Court that said medicinal preparation, International Stock Food, herein referred to, has been for years past, and is now, put up and offered for sale in several different sized packages, all of which have come to be well and commonly known to the trade in general as identifying the goods of your orator's manufacture. That the varying shapes and sizes of the several packages thus employed require the use of similarly varying labels, designs, etc., all of which have likewise come to be commonly known to the trade as identifying the commodity of your orator's manufacture, and all of which have been prepared by your orators at great expense, to accom-odate the carrying on of such business. That the packages thus commonly used and employed by your orator hold and contain respectively 24 ounces, 3 pounds, 6 pounds and 25 pounds.

And your orator further shows and states to the Court that under the terms of the act herein and in the Bill mentioned, com-
16 pliance by your orator in the matter of purchasing and affixing to each of said packages the stamp required by the terms of such act would result in compelling your orator to pay the same amount of tax for a package of 24 ounces that other commodities and the manufacturers thereof pay for a package of 100 pounds; and your orator alleges that the discrimination thus involved renders said act illegal, unreasonable, unconstitutional and void.

And your orator further avers that the enforcement of the requirement in respect to the affixing of stamps and the payment therefor in the sum in said act and hereinbefore alleged constitutes, and is, a tax upon the property and business of your orator, and is not, in any sense, a license fee measured or determined by any reasonable requirements or carrying out and effectuating the inspection required by said act; but, on the contrary, as your orator is informed and believes, said act has attempted under the guise of a police regulation to consummate a revenue measure for the purpose of raising revenue for the purpose of carrying on the general work and expenses of the Indiana Agriculture Experiment Station. And your orator further alleges that said act is in violation of the Constitution of the United States, in that it operates as an unlawful interference, with persons and property engaged exclusively in interstate commerce; and that

it is further contrary to the Constitution of the United States, Article I, section 10, providing that no state shall, without the consent of Congress, lay any imposts or duties on imports, except what may be absolutely necessary for executing its inspection law.

XIII. Your orator further shows that unless a temporary injunction is issued in this cause prohibiting said defendant from
17 doing any of the acts complained of herein pending this suit, and until a final hearing thereof, said defendant will, before such final hearing, have consummated and accompli-hed said acts in whole or in part and will utterly have destroyed plaintiff's said business in the State of Indiana for the present year, thereby rendering any relief which the Court might otherwise grant upon a final hearing ineffective and of no avail.

And your orator further shows that unless restrained by the order of this Court said defendant will, before a hearing can be had upon said application for temporary injunction, proceed to inform the various prosecuting attorneys of the State as to said alleged violation of law by your orator, and that said prosecuting attorneys will, before such temporary hearing can be had upon notice, cause arrests to be made of persons vending your orator's said preparations in the State of Indiana, and threaten other arrests of like character and thereby greatly and irreparably injure and disorganize your orator's said business in said State.

Now, therefore, the premises being considered may it please the Court to grant unto your orator a writ of subpœna commanding the defendant at a day and time therein to be asserted, to be and appear before this Honorable Court there to answer without oath (his oath being hereby expressly waived), all and singular the premises and to do and abide by such order and decree as this Honorable Court shall make therein.

And until a final hearing of said cause, for as much as by reason of the premises the defendant will, unless restrained by order of this Court, take such action in the premises as will greatly injure and destroy the rights of your orator before a final hearing can be had upon the merits of this cause. Your orator further prays that your Honors will, pending such final hearing, grant a temporary
18 injunction, after proper notice of a hearing of this application for a temporary injunction at such time as your Honors shall designate, restraining and forbidding the defendant, his agents, assistants and attorneys from taking any action in the premises against your orator to prevent or interfere with the right of your orator to vend and convey his said preparations in the State of Indiana, or to institute any proceedings against your orator to punish him for failure, or alleged failure, to comply with the demands of said defendant; and also enjoining and prohibiting said defendant, during the pendency of this suit and until the final hearing thereof, from giving *our* orally or in writing to the various prosecuting officers of the State of Indiana, or to any other agents or functionaries of said State of Indiana, charged with the enforcement of its law, or to the public, any threats of prosecution or information upon which said prosecutions are requested, or upon which the same may be based, and from

otherwise interfering with or seeking to prevent the conduct of defendant's business in said State, or to injure your orator in respect to said business by seeking to discredit or impair the reputation of his said remedy in the manner aforesaid.

And until such a hearing may be had upon said application for a temporary injunction will the Court grant unto your orator a temporary restraining order prohibiting any and all of the threatened injurious acts aforesaid; and upon final hearing of this cause upon its merits may your Honors make such injunction permanent.

And will your Honors grant unto your orator all such further relief as may be just and equitable in the premises.

W. H. BOUTELLE,
MILLER, SHIRLEY & MILLER,
Solicitors for Complainant.

19 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Marion W. Savage, being duly sworn upon his oath says that he is the complainant in the above entitled cause; that he has read over the foregoing bill of complaint and is familiar with the contents thereof, and that the same are true as he verily believes.

MARION W. SAVAGE.

Subscribed and sworn to before me the undersigned this 11th day of April, 1908.

[SEAL.] L. C. TUCKER,
Deputy Clerk U. S. Circuit Court, Dist. of Mass.

And afterwards, to wit: at the November Term of said court, on the 17th day of April, 1908, before the Honorable Albert B. Anderson, Judge as aforesaid of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now the parties by their respective solicitors and thereupon the court having heard the argument of counsel and being sufficiently advised in the premises doth now deny the motion for a temporary restraining order herein.

And afterwards, to wit: at the November Term of said court, on the 4th day of May, 1908, before the Honorable Albert B. Anderson, Judge as aforesaid of said Court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant by James Bingham, Esq., his solicitor, and filed his demurrer to the bill of complaint herein, in the words following, to wit:

United States Circuit Court for the District of Indiana.

20 No. 10786. In Chancery.

MARION W. SAVAGE, Complainant,
v.
WILLIAM J. JONES, JR., State Chemist of the State of Indiana, Defendant.

Demurrer to Bill of Complaint.

Demurrer of the Above-Named William J. Jones, Jr., to the Bill of Complaint of the Above-Named Complainant.

To the Honorable Judges of the Circuit Court of the United States for the District of Indiana:

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill;

And for cause of demurrer shows:

1. That it appears by the complainant's own showing by the said bill that he is not entitled to the relief prayed by said bill against this defendant.

2. That the said bill of complaint of complainant is wholly without equity.

3. That it appears from said bill of complaint of complainant that this court has no jurisdiction to hear and determine this action.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and prays the judgment of this Honorable Court, whether he shall be compelled
21 to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

JAMES BINGHAM,
Att'y Gen., Solicitor for Defendant.

HENRY M. DOWLING,
Of Counsel.

Oral argument requested.

DISTRICT OF INDIANA,
County of Marion, ss:

William J. Jones, Jr., makes solemn oath and says that he is the defendant in the above entitled cause; that the foregoing demurrer is not interposed for delay, and the same is true in point of fact.

WILLIAM J. JONES, JR.

Subscribed and sworn to before me this 30 day of April, 1908.

[SEAL.] MINNIE C. MORGAN,
Notary Public.

My commission expires January 24, 1911.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

HENRY M. DOWLING,
Of Counsel for Defendant.

And afterwards, to wit: at the November Term of said court, on the 19th day of March, 1909, before the Honorable Albert B. Anderson, Judge as aforesaid of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now the parties by their respective solicitors, and thereupon the court having heard the argument of counsel, and being
22 sufficiently advised in the premises, sustains the demurrer to the bill of complaint herein.

And afterwards, to wit: at the November Term of said court, on the 24th day of April, 1909, before the Honorable Albert B. Anderson, Judge as aforesaid of said court, the following further proceedings in the above entitled cause were had, to wit:

10,786, April 24, 1909.

Come now the parties by their respective solicitors, and it appearing to the court that on the 19th day of March, 1909, an order was entered in this cause sustaining the demurrer to the bill of complaint, and the complainant failing and refusing to amend said bill, thereupon the court being sufficiently advised in the premises, finds that the equity of this cause is with the defendant.

It is therefore ordered, adjudged and decreed by the court that the bill of complaint herein be and the same is hereby dismissed for want of equity.

And it is further ordered, adjudged and decreed by the court that the complainant do pay to the defendant his costs herein expended, taxed at $—.

23 And afterwards, to-wit: at the May Term of said Court, on the 15th day of May, 1909, before the Honorable Albert B. Anderson, judge as aforesaid of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant, by Messrs. Miller, Shirley & Miller, his solicitors, and files his petition for appeal and assignment of errors herein, in the words and figures following, to-wit:

Marion W. Savage, complainant above named, feeling himself aggrieved by the final decree made in the above entitled cause in equity, dated the 24th day of April, 1909, whereby it was adjudged and decreed that the bill of complaint herein be dismissed, with

costs to the defendant, for want of equity, now comes by Miller, Shirley & Miller, his solicitors, and petitions this Court for an order allowing said complainant to prosecute and appeal from said decree to the Supreme Court of the United States, under and according to the laws of the United States in this behalf made, and prays that this appeal may be allowed and that a transcript of the record and proceedings upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated May 15th, 1909.

MILLER, SHIRLEY & MILLER,
Solicitors for Complainant.

The foregoing appeal is hereby allowed this 15 day of May, 1909.

ALBERT B. ANDERSON,
U. S. Circuit Judge.

24 *Assignment of Errors.*

United States Circuit Court, District of Indiana. In Equity.

MARION W. SAVAGE, Complainant,
against
WILLIAM J. JONES, Defendant.

Marion W. Savage, complainant above named, by Miller, Shirley & Miller, his solicitors, in connection with his petition of appeal to the Supreme Court of the United States from the final decree of the United States Circuit Court in and for the District of Indiana made and entered on the 24th day of April, 1909, makes the following assignment of errors in said decree:

1. The Court erred in sustaining the demurrer of the defendant to the bill of complaint for want of equity.

2. The Court erred in dismissing the bill of complaint for want of equity.

3. The court erred in finding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action against the defendant, calling for the interposition of the court as a court of equity to prevent the defendant from interfering with the rights of the complainant to ship into the State of Indiana and sell his manufactured product, to-wit: the so-called International Stock Food in violation of the Interstate Commerce Laws of the United States.

4. The court erred in finding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action against the defendant, calling for the interposition of the court as a court of equity to enjoin the defendant from in-
25 terfering with the rights of the complainant under Section 1 of Article XIV of the Constitution of the United States, and depriving the complainant of his property contrary to said section 1 of Article XIV without due process of law.

5. The court erred in holding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action in equity against the defendant, calling for the interposition of the court as a court of equity to prevent the defendant from denying to the plaintiff the equal protection of the law.

6. The court erred in holding and decreeing by the dismissal of said bill that the said act of the Legislature of the State of Indiana referred to and whose title is set out in Paragraph 5 of said bill of complaint, which act was approved March 9, 1907, was not an attempt by said Legislature under the guise of an exercise of the police power to enact a law for the raising of revenue by "levying imposts, duties and taxes on imports beyond what is absolutely necessary for executing its inspection laws" in violation of Paragraph 2, Section 1, of Article I of the Constitution of the United States.

7. The court erred in finding and decreeing by the dismissal of said bill that said so-called International Stock Food is a food and not a medicine, and thereby the complainant was deprived under the guise of said statute of its property in the premises without due process of law.

8. The court erred in holding and decreeing that said statute by its provision that said defendant should not be required to sell stamps or labels for use on the packages manufactured and brought into the State by the complainant in less amounts than $5.00 or multiples of $5.00 was a just and legal restriction and was not a violation of the rights of the complainants as a manufacturer and importer of said goods into the State of Indiana.

MILLER, SHIRLEY & MILLER,
Solicitors for Complainant.

26 And said appeal is now by the court allowed upon the filing by the complainant of an appeal bond in the sum of $500.00, with sureties to the approval of the court.

And said complainant now files his appeal bond, with the Empire State Surety Company as surety thereon, which is now by the court approved.

And said bond is in the words and figures following, to-wit:

27 Copy.

United States Circuit Court, District of Indiana.

MARION W. SAVAGE, Complainant,
against
WILLIAM J. JONES, Defendant.

Know all men by these presents, That Marion W. Savage and The Empire State Surety Company, a corporation organized under the laws of the State of New York, having an office and place of business for the State of Indiana in the city of Indianapolis is held and

firmly bound unto William J. Jones, in the sum of Five Hundred Dollars ($500.00), to be paid to the said William J. Jones, his executors, administrators or assigns, for the payment of which well and truly to be made, they bind themselves, their successors and assigns, firmly by these presents.

Sealed and dated this 15 day of May, nineteen hundred and nine.

Whereas, Marion W. Savage has appealed to the Supreme Court of the United States, from a final decree of the United States Circuit Court in and for the District of Indiana, in equity, filed in the office of the Clerk of said Court on the 24th day of April, 1909, dismissing the bill of complaint of said Marion W. Savage against said William J. Jones, with costs, which have been adjusted by the Clerk of said Court at the sum of $56.61

28 Now, therefore, the condition of this obligation is such that if the above named Marion W. Savage shall prosecute his said appeal with effect, and answer all damages and costs, if it shall fail to make its plea good, then this obligation to be void, otherwise to remain in full force and virtue.

MARION W. SAVAGE,
By MILLER, SHIRLEY & MILLER,
His Solicitors.
THE EMPIRE STATE SURETY COMPANY,
By GEORGE W. PANGBORN,
Attorney in Fact.

Copy.

Attest:

——— ———,
Attorney in Fact.

Approved this 15th day of May, 1909.

ALBERT B. ANDERSON, *Judge.*

29 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Noble C. Butler, clerk of the Circuit Court of the United States within and for said district, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the cause of Marion W. Savage against William J. Jones, Jr., State Chemist of the State of Indiana, as fully as the same appears upon the files and records now in my office.

Witness my hand and the seal of said court, at Indianapolis in said District, this 25th day of May, A. D. 1909.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

30 UNITED STATES OF AMERICA, *ss:*

To William J. Jones, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in June next, pursuant to an appeal which has been allowed by the Circuit Court of the United States for the District of Indiana, from its final decree in a suit wherein *wherein* Marion W. Savage, is appellant, and you are appellee, to show cause if any there be why final decree mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of May, 1909.

[Seal Circuit Court of the United States, District of Indiana.]

ALBERT B. ANDERSON, *Judge.*

Service of this Citation is hereby acknowledged and copy received this 17th day of May, 1909.

JAMES BINGHAM,
Solicitor for William J. Jones.

Endorsed on cover: File No. 21,721. Indiana C. C. U. S. Term No. 245. Marion W. Savage, appellant, vs. William J. Jones, Jr., State Chemist of the State of Indiana. Filed June 12th, 1909. File No. 21,721.

INDEX.

Supreme Court of the United States.

OCTOBER TERM, 1910.

NUMBER 245.

MARION W. SAVAGE
Appellant,

vs.

WILLIAM J. JONES, JR., STATE CHEMIST OF THE STATE OF INDIANA,
Appellee.

Appellant's Brief.

The present appeal is taken from a decree of the Circuit Court of the United States for the District of Indiana, dismissing, for want of equity, a Bill filed by appellant to restrain and enjoin the enforcement by appellee, of the provisions of a local law of the State of Indiana, against appellant and the products of his manufacture, employed in and subjects of, interstate commerce.

The cause was heard on demurrer to the Bill, which was sustained by the Circuit Court. Appellant having declined to amend, a decree of dismissal was entered (R. 22).

One of the grounds assigned by the allegations of the Bill against the enforcement of the local

law, challenged the latter's validity as an unconstitutional interference with the commercial right provided by the Federal Constitution.

The constitutional question thus raised having been resolved by the decree against appellant, the appeal was prosecuted directly to this Court.

STATEMENT OF THE CASE.

As the allegations of the Bill will require detailed consideration in connection with the discussion of the several questions intended to be urged on argument, a summary statement will suffice for present purposes.

In substance the Bill alleged that complainant was, and for upwards of twenty years previously, had been, the owner and sole proprietor of a business known and conducted under the title of International Stock Food Company. That during the entire period indicated, the headquarter's office of such business had been maintained within the State of Minnesota, of which State, complainant was, at the date of the filing of the Bill and during all the times therein alleged, a citizen and resident. That the general business conducted by complainant had been the manufacture and sale of various proprietary medicinal preparations for cattle and domestic animals and the marketing and sale of such preparations throughout the various states of the United States as well as in foreign countries. That the products of complainant's manufacture had for many years been established and well and favorably known to the trade throughout the various

states of the United States as well as in foreign countries, in all whereof such products had been for many years previously to the filing of the Bill, as well as at the date thereof, extensively sold and distributed.

That one of such preparations was, and for upwards of twenty years previously to the filing of the Bill had been, known as International Stock Food, which had been manufactured, sold and distributed by appellant during all the period indicated, in the various states and foreign countries and which had been for many years previously to the Bill's filing, an established article or commodity of commerce. That such commodity had been marketed and become known and established in the trade under the trade-name or designation of International Stock Food, said name having been registered under trade-marks issued by the United States in 1893 and in 1896 under the medicinal classification.

That the product indicated was, and was intended as purely medicinal in character and that its purposes and objects had been for many years known to the trade and consumers in general and that such purposes and objects were clearly indicated and stated in the descriptive matter and directions contained upon the various packages in which the same is shipped and offered for sale.

It is further alleged that the commodity in question was investigated by the Department of Internal Revenue in 1889 and pronounced, as a result of said investigation, medicinal in character and appellant taxed therefor as a patent medicine under the War Tax of 1863, which tax had been paid by Appellant

thereafter as long as said law remained in force and effect.

That it was further investigated by the Department last indicated in 1893 with the similar result of ascertaining its medicinal character and appellant taxed accordingly therefor under the so-called War Revenue Act of 1898. That under these laws Appellant had paid as revenue taxes to the Government, previous to the filing of the Bill, amounts aggregating upwards of $40,000.

It is further alleged that subsequent to the enactment by Congress of the so-called Pure Food and Drug Act of 1906, the commodity in question was again investigated by the administrative officers of the Government, charged with the administration and enforcement of the law indicated, with the result of again ascertaining and determining its medicinal character.

It is further alleged that said commodity had at all times been manufactured under secret proprietary processes and formulas, constituting proprietary rights, and that none of its constituent elements contained anything of injurious or unwholesome character deleterious or injurious to animal life or health.

It is further alleged that for upwards of twenty years previous to the filing of the Bill, Appellant had invested large amounts of money in building up and establishing a trade in said commodity within the State of Indiana, and at the date of the filing of the Bill many hundreds of retail druggists and other dealers within said state were engaged in the handling and sale of said product in original

packages and that Appellant had enjoyed an extensive trade in said state until interferred with by Appellee in the attempted enforcement, in his capacity as State Chemist of the State of Indiana, of the local law of that state adopted by the legislature thereof in 1907.

The Bill recites various provisions of the law in question providing in substance that all manufacturers and sellers of concentrated commercial feeding stuffs shall, as a condition to sale in that state, cause their various commodities to be registered, with a designated state official, by filing in the office of such official a verified certificate stating the constituent ingredients of which it is composed and guaranteeing its composition in accordance with the recitals of such certificate; such constituents to be determined by the methods recommended by the association of Official Agricultural Chemists of the United States. As a condition to selling or offering for sale any such commodity, in addition to the requirement of registration, the Act provides for affixing to each package of such commodity a tag or label containing substantially the same matter required in the registration certificate and guaranteeing the composition of the commodity in accordance with its recitals. Also, the affixing to each package containg 100 pounds, or a fraction thereof, a stamp, purchased from the State Chemist, showing that the commodity had been registered and the inspection tax paid.

The Act further provides for the sale of such stamps by the official indicated, to manufacturers and dealers of the commodities in question, at the

price of $1.00 per hundred stamps, but that that official is not obliged to issue stamps except to the amount of $5.00 and multiples thereof. Also, that no commodity shall be registered as required by the Act's terms except the application for such registry be accompanied by an order for at least $5.00 worth of stamps. Also, that no stamps shall be issued covering a commodity not registered. Also, that the proceeds derived from the sale of such stamps shall be first appropriated to defray the expense of carrying out the provisions of the Act, including the printing of bulletins giving the results of the work of feeding stuff inspection, and for any other expenses of the State Agricultural Experiment Station as authorized by law.

Further provisions of the Act constitute the sale or offering for sale within the state of any such commodity, without registration and without compliance with the other provisions indicated, a penal offense and provide the machinery for enforcing its criminal provisions.

The Bill further alleges that acting in ostensible conformity with the provisions of the statute the appellee, charged by its terms with its enforcement, had demanded compliance by Appellant with its terms and, Appellant refusing, Appellee, through the medium of circulars and otherwise, had threatened prosecution of all dealers within the state engaged in handling such International Stock Food; as a result of which threats Appellant's trade and business within said state had been materially and injuriously effected and that unless such action by Appellee were restrained and enjoined, Appellant

would suffer irreparable loss and injury.

The Bill challenges the action of Appellee on two separate and distinct grounds: *First*—That the local law in question is illegal and unconstitutional, operating as an unlawful interference with interstate commerce and the rights granted to that commerce by the Federal Constitution. That the attempted enforcement thereof, as against Appellant, constitutes an illegal interference with his rights to engage in interstate commerce within the State of Indiana. *Second*—That the product of Appellant's manufacture is wholly without the purview of the local law and that the attempted extension of the provisions of such law and the enforcement of the requirements thereof against Appellant and the commodity of his manufacture, was without legal sanction.

In the foregoing, which has been intended to be confined to a general survey, we have purposely omitted reference to various allegations of the Bill attacking and challenging the constitutionality of particular provisions of the local law in question, reserving these last for consideration at an appropriate point in the argument later.

The Bill was demurred to on the grounds: (1) failure of allegations showing that Appellant was entitled to the relief prayed by the Bill; (2) that the Bill was wholly without equity; and (3), that the court was without jurisdiction to hear and determine the action (R 20).

The Demurrer was sustained generally by the Circuit Court, no opinion being filed.

ASSIGNMENT OF ERRORS.

1. The Court erred in sustaining the demurrer of the defendant to the bill of complaint for want of equity.

2. The Court erred in dismissing the bill of complaint for want of equity.

3. The Court erred in finding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action against the defendant, calling for the interposition of the court as a court of equity to prevent the defendant from interfering, in violation of the Interstate Commerce Laws of the United States, with the rights of the complainant to ship into the State of Indiana and therein sell his manufactured product, the so-called International Stock Food.

4. The Court erred in finding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action against the defendant, calling for the interposition of the court as a court of equity to enjoin the defendant from interfering with the rights of the complainant under Section 1 of Article XIV of the Constitution of the United States, and depriving the complainant of his property contrary to said Section 1 of Article XIV without due process of law.

5. The Court erred in holding and decreeing by the dismissal of the bill that said bill of complaint did not and does not state a cause of action in

equity against the defendant, calling for the interposition of the court as a court of equity to prevent the defendant from denying to the plaintiff the equal protection of the law.

6. The Court erred in holding and decreeing by the dismissal of said bill that the said act of the Legislature of the State of Indiana, referred to and whose title is set out in Paragraph 5 of said bill of complaint, which act was approved March 9, 1907, was not an attempt by said Legislature under the guise of an exercise of the police power to enact a law for the raising of revenue by "levying imposts, duties and taxes on imports beyond what is absolutely necessary for executing its inspection laws" in violation of Paragraph 2, Section 1, of Article I of the Constitution of the United States.

7. The Court erred in finding and decreeing by the dismissal of said bill that said so-called International Stock Food is a food and not a medicine, and thereby the complainant was deprived under the guise of said statute of its property in the premises without due process of law.

8. The Court erred in holding and decreeing that said statute, by its provision that said defendant should not be required to sell stamps or labels for use on the packages manufactured and brought into the State by the complainant in less amounts than $5.00 or multiplies of $5.00, was a just and legal restriction and was not a violation of the rights of the complainant as a manufacturer and importer of said goods into the State of Indiana.

9. The Court erred in not retaining jurisdiction of the cause for granting appropriate equitable relief as prayed by the Bill.

General Considerations.

At the outset, it may be advisable to briefly analyze the status of the case as presented on the present appeal.

As above stated, complainant rested his right to equitable relief on the general grounds (1) that the local law of Indiana operated as an unlawful interference with the right of interstate commerce and that the attempted enforcement of the law by Appellee, or application thereof to commodities of interstate commerce, resulted in the denial of rights in that behalf protected by the Federal Constitution; (2) that the local law in question did not cover or embrace the commodity of Appellant's manufacture and that the attempted extension thereof by Appellee as against the commodity in question was illegal and without the sanction of any authority vested in the latter by the law's provisions. All the several assignments of error are resolved on consideration of the two questions thus suggested.

These questions obviously involve the application of distinct as well as variant principles.

The question whether the commodity of Appellant's manufacture is or is not within, or of a character affected by, the local law, turns upon considerations entirely distinct from that of the law's validity. The right to equitable relief on this phase

of the case, assuming the contentions of appellant as respects the commodity are sustained, is sufficiently indicated in *Scully v. Bird*, 209 U. S., 481.

Considered from this standpoint, the ultimate question would involve the determination of no right arising under the Constitution or Laws of the United States, but jurisdiction for the purpose of granting appropriate equitable relief on the facts stated would rest upon the diversity of citizenship disclosed by the Bill.

In the other aspect of the case the question whether the particular commodity is embraced or covered by the terms of the law is unnecessary to decision of the question presented. If the local law thus challenged is unconstitutional, as alleged, any action had or taken thereunder by appellee in its attempted enforcement was illegal and appellant, on familiar grounds, entitled to appropriate relief enjoining such enforcement.

The ascertainment of the unconstitutionality of the law obviously disposes of the entire case, wholly regardless of the phase first above suggested. The latter will require consideration only in the event the law is held constitutional.

The constitutional question thus presented establishes the right of direct appeal from the decree of the Circuit Court to this Court.

Scott v. Donald, 165, U. S., 58.

Penn Ins. Co., v. Austin, 168 U. S., 694.

Holder v. Aultman, 169 U. S., 88.

Loeb v. Columbia Twp., 179 U. S., 472.

Spreckles Sugar Ref. Co. v. McLain, 192 U. S. 397.

Mississippi R. R. Commission v. Ill. Cent. Ry., 203 U. S., 335.

Under established principles, every question arising upon the record is open for consideration on the present appeal.

Carey v. Hudson Ry. Co., 150 U. S., 181.
Horner v. United States, 143 U. S., 576.

While, as above stated, the Demurrer challenged the jurisdiction of the Circuit Court, the objection thus indicated is so clearly without foundation as to require no comment. For the remainder, the grounds of demurrer challenged the sufficiency of the facts as presenting a case for equitable relief. The case therefore, on the record before this court, presents the same issues as those presented to the Circuit Court. As the question of the constitutionality of the local law, if resolved in accordance with the claims of Appellant, precludes the necessity of considering any other matter suggested by the case, that question will be first discussed.

THE LOCAL STATUTE OF INDIANA IN QUESTION, CONSTITUTES AN UNLAWFUL INTERFERENCE WITH AND ATTEMPTED REGULATION OF INTERSTATE COMMERCE.

Consideration of this question may be resolved, for purposes of convenience, on three general propositions:

First—That the law in question, in so far as applicable to the subjects or commodities of interstate commerce, is both regulatory and restrictive

of that commerce. That its action and effect in this behalf is direct, as contradistinguished from indirect, in that by its terms it undertakes to impose as conditions precedent to the free and unrestricted enjoyment of the privileges of interstate commerce, the fulfillment of certain requirements, including registration of the commodity; payment of the equivalent of a registration fee; guaranteeing the character and standards of the commodity; prescribing an arbitrary standard for determining the constituent ingredients "by the methods recommended by the Association of Official Agricultural Chemists of the United States"; imposing a stamp tax or duty on each article sold or offered for sale; refusing the privilege of commerce in such articles on payment of the tax unless registered in accordance with the law; and, finally, visiting with criminal responsibility any sale within said state, whether for public or private consumption, without compliance with the Act's terms.

Second—That the Act in question is not an inspection law; that no inspection is required by its terms; that no provision is made for branding or otherwise identifying a product as inspected and conforming to the requirements of the law; that no standards are prescribed by the terms of the law with respect to which inspection should be had; that in so far as any method is prescribed for determining the standard of a commodity, it is referred to a self-constituted organization gratuitously termed The Association of Official Agricultural Chemists of the United States and in this behalf

involves an unlawful delegation of legislative authority; that the reference in the terms of the Act to inspection is an evasion; that the certificate and guaranty of the manufacturer is, and is obviously intended as, the substitute for inspection; and, finally, that the tax or duty ostensibly imposed as an inspection fee is obviously imposed for the purposes of revenue and provision made by the express terms of the Act itself that such revenue may be appropriated to purposes wholly foreign to the actual cost of inspection, viz: the printing of bulletins and defraying the expenses of the Indiana State Agricultural Experiment Station.

Third—That the Act of Congress of June 30th, 1906, entitled, "An Act for Preventing the Manufacture, Sale or Transportation of Adulterated or Misbranded or Poisonous or Deleterious Foods, Drugs, Medicines and Liquors and for Regulating Traffic Therein and for Other Purposes," commonly termed, The Pure Food and Drug Act, covers and embraces the entire subject matter respecting interstate commerce in the class of commodities indicated; that by virtue of this Act, a uniform system governing and regulating the subject of such commerce is prescribed; and that in the presence of such uniform system local legislation of the same general character and in the same general sphere is superseded.

The foregoing will be considered in the order stated.

CONSIDERATION OF THE ACT AS A DIRECT REGULATION AND CONSEQUENT INTERFERENCE WITH COMMERCE.

As the entire text of the law is appended to this brief, reference will be made at this point only to the provisions necessary for considering the topic under discussion:

The Act in question is entitled,

> "To provide for the inspection and analysis of, and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana; to prohibit the sale of fradulent or adulterated concentrated commercial feeding stuffs; to define the term concentrated commercial feeding stuffs; to provide for the guarantees of the ingredients of concentrated commercial feeding stuffs; for the affixing of labels and stamps to the packages thereof, as evidence of the guarantee and inspection thereof; to provide for the collection of an inspection fee from the manufacturer of, or dealers in concentrated commercial feeding stuffs; to fix penalties for the violation of the provisions of this act, and to authorize the expenditure of the funds derived from the inspection fees."

The Act provides:

> Section 1. "That before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Indiana, the manufacturer, importer, dealer, agent or person who causes it to be sold, or offered for sale, by sample, or otherwise, within this State, shall file with the State Chemist of Indiana at the Indiana Agricultural Experiment Station, Purdue University, a statement that he desires to offer such concentrated commercial feeding stuff for sale in this State, and also a certificate, the execu-

tion of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, the ingredients from which the concentrated commercial feeding stuff is compounded, and the minimum percentage of crude fat and crude protein allowing one per cent. of nitrogen to equal six and twenty-five hundredths per cent. of protein, and the maximum percentage of crude fibre which the manufacturer, or person offering the concentrated commercial feeding stuff for sale guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States."

Sec. 2. "Any person, company, corporation or agent that shall sell or offer, or expose for sale, any concentrated commercial feeding stuff in this State, shall affix, or cause to be affixed to every package or sample of such concentrated commercial feeding stuff in a conspicuous place on the outside thereof, a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent, and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuff in the package, the name, brand, or trade-mark under which the concentrated commercial feeding stuff is sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis stating the minimum percentage of crude fat and crude protein, determined as described in section 1, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent, shall also affix a stamp purchased from the State Chemist, showing that the concen-

trated commercial feeding stuff has been registered as required by section 1 of this act, and that the inspection tax has been paid. When concentrated commercial feeding stuff is sold in bulk a tag as hereinbefore described, and a State Chemist stamp shall be delivered to the consumer with each one hundred pounds, or fraction thereof; provided, That for wheat bran a special stamp covering fifty pounds shall be issued on request, and one such stamp, attached to the tag hereinbefore mentioned, shall be delivered to the purchaser with each fifty pounds or fraction thereof."

Sec. 3. "The State Chemist shall register the facts set forth in the certificate required by section 1 of this act in a permanent record, and shall furnish stamps or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered at such times and in such numbers as the manufacturers or agents may desire: Provided, That the State Chemist shall not be required to sell stamps or labels in less amount than to the value of five dollars ($5.00) or multiples of five dollars for any one concentrated commercial feeding stuff; Provided, further, That the State Chemist shall not be required to register any certificate unless accompanied by an order and fees for stamps or labels to the value of five dollars ($5.00) or some multiple of five dollars; Provided, further, That such stamps or labels shall be printed in such form as the State Chemist may prescribe; Provided, further, That such stamps or labels shall be good until used."

Sec. 4. "On or before January 31st of each year, each and every manufacturer, importer, dealer, agent or person, who causes any concentrated commercial feeding stuff to be sold or offered or exposed for sale in the State of Indiana shall file with the State Chemist of Indiana, a sworn statement, giving the number of net pounds of each brand of concentrated

commercial feeding stuff he has sold or caused to be offered for sale in the State for the previous year ending with December 31st; Provided, That when the manufacturer, jobber or importer of any concentrated commercial feeding stuff shall have filed the statement aforesaid, any person acting as agent for said manufacturer, importer or jobber, shall not be required to file such statement."

Sec. 9. "The State Chemist is hereby empowered to prescribe and enforce such rules and regulations relating to concenertated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted for concentrated commercial feeding stuffs. The State Chemist is further empowered to refuse to issue stamps or labels to any manufacture, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in this State and refuse to submit the sworn statement required by section 4 of this act."

The penal provisions of the Act are found in Section 6 and embrace, amongst the therein enumerated offenses, the following:

"Any person, company, corporation or agent that shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the State Chemist as required by section 1 of this act, or which does not have affixed to it the tag and stamp required by section 2 of this act, * * * * or shall refuse or fail to make the sworn statement required by section 4 of this act, shall

be deemed guilty of a misdemeanor, and on conviction thereof shall be fined, etc."

In considering the constitutionality of this law, in the aspect presently under discussion, certain salient features are immediately suggested by the terms, above quoted, which are seemingly conclusive, in characterizing it as an unconstitutional regulation of commerce.

The interdependence of its various provisions is self-evident from the most casual inspection. That it was the object of this law to prescribe a "system" so to speak, governing the introduction and sale of the commodities of the classes embraced in the Act's terms, is clear.

Segregation of its various provisions is impossible without destruction of the "system", of which each of such provisions constitutes a component part. The Act must, therefore, be considered and interpreted as it was obviously intended by its framers.

As applied to interstate commerce, it will be observed that the provisions of the law make no distinction between importations into the State for *private*, as contradistinguished from public, use or consumption.

The first provision of the first section of the Act imposes, as a condition precedent to the right of the manufacturer or importer to offer for sale or sell within the state, the requirement of filing "with the State Chemist of Indiana * * *" a statement that *he desires to offer* such concenerated commercial feeding stuff for sale.

The second provision of the same section emphasizes this condition precedent to the commercial privileges in the requirement that such commodity, before introduction or sale, shall be *registered* with the designated state official.

Failure of compliance is visited with criminal responsibility in that "Any person * * * or *agent* who shall offer for sale, sell or expose for sale" any such commodity not first registered, is subject to fine for each offense.

In *Vance v. Vandercook* (No. 1), 170 U. S., 438, it was held that no state could impose conditions precedent of this character on the exercise of the right and privilege of interstate commerce conferred by the Federal Constitution.

On this point, Mr. Justice White, delivering the opinion of the Court in that case observed as follows:

> "The right of the citizen of another state to avail himself of interstate commerce cannot be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the law-making or the executive power of the state; * * * Whether or not it may be exercised depends *solely upon the will of the person making the shipment, and cannot be in advance controlled or limited by the action of the state in any department of its government.*"

We have emphasized the foregoing requirements for the reason we think it will be observed, as our

analysis proceeds, that the substance of the entire system, attempted to be prescribed by the Act in question, rests upon these unconstitutional features.

It will next be observed that while the Act has adroitly attempted to avoid the requirement of a registration fee, the results in this respect arise to no higher dignity than a distinction without a difference, in view of the provisions of Section 3, to the effect, "That the State Chemist shall not be required to *register any certificate* unless accompanied by an order and fees for stamps or labels to the value of $5.00 or some multiple of $5.00."

While this may not be the precise equivalent of a registration fee, it involves so palpable an evasion as to leave no reasonable room for doubt as respects the objects of the requirement. The demonstration of this is so obvious as to hardly require comment.

It is an advance payment, required to be made to obtain the filing of the registration certificate, and must be made regardless of whether the commodity is *actually sold* in the state or not.

As an incident to the requirement of registration, the Act embraces the further condition that the manufacturer or dealer shall file with the State Chemist a verified analysis showing the constituent ingredients of which the commodity, desired to be offered for sale in the state, is composed.

If, in the consideration of the constitutionality of this law as applied to subjects or commodities of interstate commerce, we were to pause at this point, the resulting situation clearly discloses the imposition of three separate and distinct requirements, each one of which constitutes an unlawful

and unconstitutional restriction or condition on the exercise of a right which is beyond the power of the states to constitutionally restrict or impose any direct conditions whatsoever.

Granting, for purposes of argument, the assumed reserved powers of local police regulation with respect to a subject-matter such as that embraced by the terms of the Act in the respects above indicated, the statute has transcended the limits of those powers and imposed restrictions and conditions, acting immediately and directly upon interstate commerce, which are neither reasonable, necessary or essential to the effectuation of the purposes calling for or justifying their exercise.

If we further grant, argumentatively, that the police power embraces the prevention of adulteration, and fraud and deception in the sale, of commodities entering into the consumption of the people of a state and that this power may be exercised for the purposes indicated, even though its exercise may, to some extent, or, as it is termed, "indirectly", affect interstate commerce, without running counter to the provisions of the Federal Constitution, we are not justified in assuming anything as within the limits of that power which is not necessarily and fairly directed at subserving the objects of the exception to the general inhibition in this regard.

If legislation of this character is to be tested as respects its constitutionality upon considerations that the means may indirectly or remotely refer to the accomplishment of the end or subserve administrative convenience or expediency, it is seemingly

self-evident that a variety of restrictive and conditional systems may be effectuated by the legislation of different states, limited only by the varying local conceptions of each.

Once it be conceded that the power resides in the several states to attach any and every condition the local government may see fit to impose upon the commodities of interstate commerce, only provided the methods adopted render such laws more conveniently and readily enforceable, the variety of such methods is obviously only limited by the ingenuity of the legislature of each separate jurisdiction.

The conditions above mentioned in the law in question have no direct or immediate relation to the prevention of adulteration or of deception or fraud in the sale of the commodities mentioned. Requirements of this character are incidental and collateral to any such purpose.

The requirement that any person desiring to engage in interstate commerce within the limits of the state shall signify his intention so to do; that this shall be followed by the registration of the commodity, including a guaranty that the commodity shall correspond with the verified and registered analysis, may all have a certain tendency to subserve the general legislative purpose. This, however, is not the criterion. These, and other conditions of varying import, which will readily suggest themselves, might similarly be incorporated in an enactment for the same general purpose. The required guaranty of the analysis might, with precisely as much propriety, and more potency as regards

the desired end, be coupled with a requirement that the merchant should file a bond in support of the guaranty.

We are not here dealing with the question of the power of the state with respect to matters of internal policy. We are dealing exclusively with that power which is limited and measured by the constitutional prohibition against direct restriction or regulation of commerce amongst the several states, and any exercise of which must recognize and presuppose the rule aptly expressed in *Robbins v. Shelby Taxing District*, 120 U. S., 489.

> "In a word, it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems."

To same effect: *West v. Kansas Gas Co.*, 221 U. S., 229.

It is no answer to say that the attempted exercise of such powers is referable to considerations appertaining to local police regulation and that their validity is attested by this circumstance. As applied to interstate commerce, the question still remains, whether, in the attempted exercise of otherwise concededly valid powers, that commerce has been directly regulated or restricted. In its last analysis, the question is not to the exercise of what local power particular legislation is referable but whether, in the exercise of that power, the local government has transcended the limits fixed by the Federal Constitution.

Asbell v. Kansas, 209 U. S., 251, 254, 255.

Atlantic Coast Line v. Wharton, 207 U. S., 328, 334.

As said by this Court in *Bowman v. Chicago Ry.*, 125 U. S., 465:

> "But whatever may be the nature and reach of the police power of a state, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. * * * * It cannot, without the consent of Congress, expressed or implied, regulate commerce between its people and those of the other states of the Union in order to effect its end, however desirable such a regulation might be."

In *Walling v. Michigan*, 116 U. S., 446, quoted and approved in the authority last above:

> "The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States Government created thereby."

In the recent case of *Adams Express Company v. Kentucky*, 214 U. S., 218, in considering the law there in question the Court said:

> "This legislation is in the exercise of the police power, a power which, generally speaking, belongs to the state, and is an attempt in virtue of that power to directly regulate commerce, but in case of conflict between the powers claimed by the state and those which belong exclusively to Congress, the former must yield, for the Constiution of the United States and the laws made in pursuance thereof 'are the supreme law of the land.'"

Quoting from *Atlantic Coast Line v. Wharton*, *supra*, the decision continues:

> "That any exercise of state authority, in whatever form manifested, which directly regu-

> lates interstate commerce, is repugnant to the Commerce Clause of the Constitution."

And in *Leisy v. Hardin*, 135 U. S., 100, wherein it was contended that the power of local police extended to and embraced all legislation fairly calculated to promote the security of the lives, health and comfort of the citizens of a state, this Court observed:

> "Yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the state, unless placed there by Congressional action."

If, therefore, the general power to legislate against the adulteration of food products be conceded as within the legitimate scope of the assumed police power, (*Crossman v. Lurman*, 192 U. S., 189) the concession cannot be logically extended to authorize the imposition of such conditions and restrictions on the right of exercise of interstate commerce as those embraced in the Act in question, considered above.

The compulsory requirement of registration and guaranty that a manufactured commodity, intended to be thereafter shipped into a state, shall correspond with a verified analysis filed for purposes of, and as a condition to, such registration, has no immediate reference whatsoever to the general subject of adulteration. This is at once seen when we consider that the requirements are applicable generally to all commodities of the character embraced within the Act's terms and are, therefore, as applicable to one absolutely pure and wholesome in

its composition as to one adulterated or containing deleterious substances.

Thus considered, the reasoning in *Schollenberger v. Pennsylvania,* 171 U. S., 1, is applicable:

> "A law which does thus prohibit the introduction of an article like oleomargarine within the state is not a law which regulates or restricts the sale of articles deemed injurious to the health of the community, but is one which prevents the introduction of a perfectly healthful commodity merely for the purpose of in that way more easily preventing an adulterated and possibly injurious article from being introduced."

While the case thus cited had reference to prohibitive legislation, the reasoning is seemingly equally applicable to legislation directly restricting the free and untrammeled exercise of the commercial right. Restrictions on the exercise of this right with respect to wholesome commodities are not justified for the purpose "of in that way more easily preventing an adulterated and possibly injurious article from being introduced."

Bnt the vice of the Act in question is not limited to the conditions and restrictions thus far considered. Its direct and immediate effect, as an attempted regulation, as well as restriction, we might say attempted dictation, of commerce, appears still more clearly from the further analysis of its requirements.

The registration statement provided by Section 1 requires the manufacturer to state under oath the ingredients of which the commodity is composed:

> "And the minimum percentage of crude fat and crude protein allowing one per cent. of nitrogen to equal six and twenty-five hundredths per cent. of protein, and the maximum percentage of crude fibre which the manufacturer, * * * * guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States."

Whether the "methods" last mentioned are intended to govern and guide the manufacturer or those charged with the law's administration, is left by the context to conjecture.

Section 2 requires that the same analysis and guaranty shall be affixed to every package or parcel of the commodity imported and offered for sale within the state. While the Act does not contain an express prohibition against importation and sale, prohibition is implied and its equivalent effected, by making compliance a condition to the right of importation and sale and visiting failure of ~~such~~ without compliance ~~with these requirements, the compliance~~ with criminal responsibility.

Here again, as in the case of the conditions discussed above, the requirements have no immediate or necessary reference to the general subject of adulteration whatsoever. They are indiscriminately applicable to all commodities; those of pure and wholesome character as well as those impure and unwholesome.

To justify the assumption of power on the part of the state to enact legislation of this character, the process of reasoning must be that, because certain compounded commodities are adulterated or com-

posed of impure ingredients, the state may require of every manufacturer, as a condition to the right of sale within its limits, the disclosure of the ingredients entering into his commodity and a guaranty to the public that its constituent elements are as thus indicated.

In principle, how is the assumption of any such power to be differentiated from that which should undertake to condition the right of importation and sale of *every commodity entering into domestic consumption,* upon a guaranty of standard of quality?

The answer is seemingly, that the results are not germane to the accomplishment of the single purpose to which the exercise of such powers must be referred and to the direct accomplishment of which they must be directed. The power, if it exists at all, is, of necessity, limited in its exercise to that which is calculated to the direct accomplishment of the purpose to which it owes its origin. If the effect in the accomplishment of such purpose is indirect and remote and the results operate directly and immediately as an interference with the commercial right, the legislation cannot be sustained.

If, under the guise of restricting the importation and sale of adulterated commodities, legislation may be adopted restricting and limiting the right of importation and sale of all commodities and conditioning the exercise of that right upon such formalities as each state may see fit to impose, the results are expressed in the language of this Court in *re Rahrer,* 140 U. S., 545:

> "The same process of legislation and reasoning adopted by the state and its courts could bring within the police power any article of consumption that a state might wish to exclude, whether it belonged to that which was drank, or to food and clothing."

In considering this phase of the case, it is wholly immaterial that the ultimate purpose of the Act was obviously to prevent fraud upon, or deception of the public. The essential fact is that the legislature, in the attempted effectuation of this purpose, have resorted to the unconstitutional means of comprehending within their restrictive and conditional requirements, all commodities of the general character indicated in the Act's terms and made those restrictions and conditions generally applicable to all. To reach the "illegitimate" traffic, conditions and restrictions have been imposed, acting immediately and directly on the legitimate subjects of traffic in interstate commerce. The end cannot justify the means unless the latter be without the pale of the restraints imposed by the Federal Constitution.

As said by this Court in *Bowman v. Chicago Railway, supra:*

> "If authorized, in the present instance, upon the grounds and motives of the policy which have dictated it, the same reason would justify any and every other state regulation of interstate commerce upon any grounds and reasons which might prompt in particular cases their adoption."

The immediate effect of the requirement which we have termed as substantially the equivalent of

a guaranty of standard or quality is seen by reference to Section 6, providing in substance that if, as a result of analysis "made by or under the direction of the State Chemist" the commodity is found "to contain a smaller percentage of crude fat or crude protein than the minimum guarantee," the offending manufacturer or seller shall be subject to criminal prosecution.

Whatever may be thought of the expediency of legislation of this character, considered exclusively with respect to the internal policy of a state, seemingly no plausible ground can be suggested for denying its necessary resultant operation, not only as a regulation of the privilege but as restrictive of the right of commercial intercourse between the states.

If, on the one hand it be contended that requiring every manufacturer to disclose the several constituent ingredients of which a commodity is composed and imposing criminal responsibility for misrepresentation in this respect is calculated to prevent deception and fraud upon the part of the public, it may be answered, on the other, that such is not its necessary effect and that the imposition of such a condition exceeds the limits fairly calculated and necessary to accomplish that result. Moreover, the requirement imposes a direct restriction or condition on commerce in that, in effect, it operates to exclude from the state all commodities of the class indicated, wholly regardless of their purity and wholesomeness, the manufacturers whereof are unwilling or decline to comply with the provision.

It is no answer to the obvious conclusion in this respect to say that the Act's requirements in the respect indicated are without prejudice to articles of pure and wholesome character. It is well-known and attested by decisions too numerous to require citation, that the principal value in many commodities entering into commerce, lies in the secret methods, processes or formulas, as well as ingredients entering into their manufacture, and that the rights in such secret processes are proprietary in character and entitled to legal protection.

As applied to such a commodity, the requirement of the Act indicated is equivalent to denying the markets of the state to its manufacturer, unless, as a condition to the enjoyment of such market, the manufacturers consent to the abandonment, by public disclosure, of the proprietary right indicated.

The question of the character of the commodity, of its wholesomeness or purity is entirely foreign to anything thus indicated. It would apply equally to the commodity, which properly challenged *in ordinary legal procedure*, could establish its character for wholesomeness and purity, as well as to one adulterated or impure.

An obvious distinction is to be noted between legislation inhibiting the importation and sale of articles adulterated or injurious to health or those offered or exposed for sale under conditions amounting to misrepresentation, and legislation which restricts and imposes conditions upon the right of importation and sale of commodities in general. The former presupposes a recognition of the right of both importation and sale, but attaches thereto

the qualification that if the commodity is of the character inhibited by law, appropriate means may be taken for inflicting punishment for the law's violation or preventing the further sale of the unlawful commodity. Such legislation further presupposes, as stated in the *Bowman* case *supra*, that the question whether the commodity is, or is not, unlawful, *is one to be decided in the ordinary course of judicial procedure.* The latter presupposes that wholly regardless of the character of the commodity, the manufacturer may be compelled as a condition to the shipment into the state or of the offering of the commodity there for sale, compliance with the arbitrary conditions of the statute's creation.

In *Collins v. New Hampshire*, 171 U. S., 30, the local law in question provided in substance that oleomargarine should not be offered for sale within the state unless colored pink. Except as indicated, the statute contained no prohibition on either the right of importation or sale. In deference, doubtless, to the peculiar idiosyncrasies of human taste, the effect of the statute was construed by this Court as prohibitive.

In principle, what distinction exists between the denial of the constitutional power of the state to impose, as a condition to the enjoyment of the commercial right, the form in which the commodity itself shall be sold, and that which undertakes to impose conditions as to the dress, labels or information to be contained in the packages in which the article is shipped or offered for sale?

In its regulatory and restrictive features, the Act in question does not stop with the provisions thus far discussed. This conclusion is emphasized and reenforced by consideration of the provisions of Section 9. In this connection it must be recalled that the requirement of registration of the commodity is made by the Act, the first essential condition to the right of importation. By the Section under consideration (9), it is provided that "the State Chemist is hereby empowered * * * * to refuse the registration of any feeding stuff * * * when the percentage of crude fibre is above or the percentage of crude fat or crude protein below the *standards adopted for concentrated commercial feeding stuff.*"

Registration may similarly be refused to any manufacturer failing to file the sworn annual statement of sales made within the state during the preceding year.

It may be premised of the consideration of these provisions that the refusal or deniel of registration is, as respects interstate commerce, the equivalent of exclusion from the state of the unregistered commodity. In legal effect therefore, the former of the provisions indicated is equivalent to making the state, or its designated administrative official, the judge of standards of manufacture with the consequent right and authority of exclusion from the state of every commodity embraced within the Act's terms, not conforming to the "standards" thus prescribed.

In the interpretation of this provision, no basis can be found for the claim that the power thus at-

tempted to be created has any reference whatsoever to either the subject of adulteration or prevention of fraud or deception. It is an unqualified attempt upon the part of the legislature of the state to determine for itself, through the action of its local administrative official, the standards of manufacture which shall be observed as a condition to the right of importation or sale within the state.

Under this provision, it is clear that if such power exists constitutionally and may be delegated to any department or official of the state government, the latter's decision is final and conclusive and this wholly without regard to the purity or impurity of the commodity or the circumstances attending its sale whether fairly calculated to apprise the public and thus negative the idea of deception or otherwise.

If any such power exists in one state, it must equally and for the same reasons exist in all and, as a necessary consequence, each state be held possessed of authority to determine for itself the standards of manufacture and attach compliance with such standards as a condition to the privilege of commerce.

It is no answer to the obviously unconstitutional feature of the Act last indicated to claim that it will be time to question this feature when the state has adopted, through its administrative official, an arbitrary standard governing the condition of manufacture. By the terms of the statute the state has asserted its power in this behalf and delegated its exercise to the designated local official. It is made the condition of the right of registration that any

commodity within the class described by the Act shall conform to certain standards and if the Act is susceptible of any practical efficacy whatsoever, except as a disguised revenue measure, it was obviously intended that this purpose should be carried out. There is seemingly therefore, no escape from the inevitable conclusion, that if registration is a condition to the right of exercise of commerce with the state and the right of registration in turn is conditioned that the commodity offered for registration shall conform to locally required standards of manufacture, the effect, so far as the commercial right is concerned, is immediate and direct.

That the same is true of the latter of the provisions above indicated, providing in substance that the right of registration may be further conditioned on the filing by the manufacturer of a verified statement of the amount of business done within the state, is seemingly too clear to require comment. Nothing could be further from a requirement aimed at preventing adulteration or deception or fraud on the general public.

In connection with the feature of standards of manufacture above discussed, attention may be again directed to the provisions of Section 1 whereunder it is provided, as above stated, that the constituents entering into the commodity are to be "determined by the methods recommended by the association of official agricultural chemists of the United States."

We shall have occasion later to consider the effect of this requirement, when the Act is considered from the standpoint of an inspection law. For pres-

ent purposes, the essential feature to be noted is, that the character of the commodity, as respects its freedom from adulteration, is to be determined by purely arbitrary and unjudicial methods. By application of these, the manufacturer is required to characterize his product in matter of detail, regardless of its results, in the rightful ascertainment or determination of the commodity itself. This arbitrary method of characterizing the commodity is a further condition to its sale in interstate commerce.

For present purposes, in ascertaining the constitutionality of the law, whether the requirement indicated proceeded from the conception that a self-constituted body of gentlemen, characterizing themselves as an association of official agricultural chemists, were striving at uniformity in standards of manufacture in the various states as respects commodities of the class in question, or whether this so-termed association be regarded in the light of a busy-body institution, seeking dictatorial powers over-reaching and usurping the functions of judicial administration, the fact remains that whether a commodity is pure and wholesome, or impure and adulterated, is a matter for judicial ascertainment and that the right of sale of that commodity cannot be conditioned in advance or the question predetermined by arbitrary unjudicial tribunals or methods.

The interdependence of the various provisions of the law, to which attention has been called, is at once seen when we come to consider that a merchant or manufacturer willing to accede to the Act's re-

quirements as respects the payment of the stamp tax or so-called inspection fee, is not thereby entitled to the privileges of commerce. That privilege is dependent upon registration and the several other features above discussed, without which the sale or offering for sale for either public or private consumption within the limits of the state is made, by the terms of the Act, a criminal offense.

Up to this point we have assumed that state legislation, strictly limited and directly aimed at the prevention of adulteration of articles entering into domestic consumption, or for the prevention of deception of the public in the purchase of such commodities, is within the constitutional power of the states.

The demonstration of the unconstitutionality of the statute in question has not required detailed consideration of the limits of the so-termed local reserved powers of the police.

By adopting this method of argument in the consideration of the constitutional question, we do not wish to be taken as acceding to the existence of any such rule as that broadly stated above. Down as late as the decision of this Court in *Leisy v. Hardin, supra,* the limit of the local police power was seemingly clearly defined at the point where the exercise of that power directly interfered with the provisions of the Federal Constitution relating to interstate commerce. In that case it was said:

> "The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, etc., belongs to the class of powers pertaining to locality * * * * and to the protection, the safety and the welfare of

> society, originally necessarily belonging to, and upon the adoption of the constitution, reserved by, the states, *except so far as falling within the scope of a power confided to the general government.*"

And again:

> "And while, by virtue of its jurisdiction *over persons and property within its limits*, a state may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action."

Substantially similar conclusions were announced in the previous case of *Bowman v. Chicago Railway, supra*, wherein the subject was exhaustively considered and the previous cases reviewed and the following conclusion announced:

> "If, from its (the commodity's) nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the State, that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction. And, as an incident to this power, a State may use means to ascertain the fact. And here is the limit between the sovereign power of the state and the Federal power. That is to say, *that which does not belong to commerce* is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this Court in the cases of *Gibbons v. Ogden; Brown v. Maryland*, and *New York v. Miln.*"

Local laws of varying character affecting commerce between the states and with foreign nations had, it is true, previously been sustained, but solely upon the theory that their operation and effect upon commerce was indirect or remote and therefore not contrary to the provision of the Federal Constitution.

Down to this point in our constitutional jurisprudence, the commercial right had been broadly construed and jealously guarded against encroachment by local law, whether referable to the power of police or otherwise. This condition remained until the decision of *Plumley v. Mass.*, 155 U. S., 461, in which the doctrine was more or less broadly asserted, in substance, that the police power of the states had not been surrendered at the time of the adoption of the Constitution; that those powers were reserved notwithstanding the Constitution and that they embraced, within the legitimate limits of their exercise, the power of protecting the health and welfare of the people by legislation aimed at the prevention of fraud in the sale of products of domestic consumption.

Based largely upon what is assumed to be inferable from the general language of the late Mr. Justice Harlan in delivering the opinion of the majority of the Court in that case, rather than upon the precise question there presented and actually decided, a vast array of local statutes, regulatory of commerce, have been enacted into laws by a comparativly large number of the states, during the last few years.

The law in question in the case at bar is one of this class. Taken in their general features, in their last analysis, all these laws proceed in the main from a similar general conception of constitutional interpretation. This may be expressed in the idea, that as the reserved powers of police are unaffected by the Federal Constitution, at least in so far as their exercise is directed at safeguarding the welfare and health of the citizens, any measure susceptible of characterization as having this general object and purpose in view, notwithstanding it regulates and restricts the commodities as well as the conditions of commerce, is within the constitutional limits of the power thus indicated.

Let us see therefore, precisely what was presented for decision in the *Plumley* case. This sufficiently appears from the language of the opinion in the *Schollenberger* case, *supra:*

> "It will thus be seen that the case was based entirely upon the theory of the right of a state to prevent deception and fraud in the sale of any article, and that it was the fraud and deception contained in selling the article for what it was not, and in selling it so that it should appear to be another and a different article, that this right of the state was upheld."

This was the only question in the case and the only consideration of local power must necessarily be limited accordingly. This further appears from the dissenting opinion of Chief Justice Fuller, concurred in by Justices Field and Brewer as follows:

> "I deny that a State may exclude from commerce legitimate subjects of commercial dealings because of the possibility that their ap-

> pearance may deceive purchasers in regard to their qualities. * * * *
>
> The concession involves a serious circumscription of the realm of trade and destroys the rule by an unnecessary exception. * * *
>
> Fluctuation in decision in respect of so vital a power as that to regulate commerce among the several States, is to be deprecated, and the opinion and judgment in this case seem to me clearly inconsistent with settled principles."

While the *Plumley* case qualified and limited the general language employed by the Court in *Leisy v. Hardin,* the principles of the latter cannot be held to have been overthrown, in fact, were expressly reaffirmed in the recent case of *Adams Express Company v. Kentucky,* 214 U. S., 218, *supra,* in which, as above stated, it was held that "Any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce is repugnant to the commerce clause of the Constitution."

We shall not undertake a detailed review of the various cases between the *Plumley* and the *Adams Express Company* case last above referred to or to reconcile what, with due deference, impresses us as irreconcilable.

Speaking generally, it is apparent that the decided cases which appear to have recognized exceptions to the general rule inhibiting interference with or regulations of interstate commerce, have been confined to local laws forbidding the introduction or sale of adulterated or impure articles or commodities exposed for sale under circumstances calculated to deceive or defraud the public.

Laws, thus limited and confined in their operations to the purposes indicated, may possibly be sustained upon the theory indicated in the *Plumley* case, that their effect, so far as the commercial right is concerned, is rather indirect than direct.

But the concession of the validity of legislation, thus limited and directly aimed at the accomplishment of the specific purpose, is far from conceding to the states the assumed power of attempting, under the guise of laws of the character indicated, to impose conditions precedent upon the exercise of the commercial right, regulations and restrictions with respect to lawful commodities entitled to the enjoyment of that right, and legislation necessarily of attempted extra-territorial effect undertaking to impose standards of manufacture.

The law of Indiana in question, considered from the constitutional standpoint in its effect upon interstate commerce, is clearly beyond the scope of anything suggested by the decisions thus reviewed. Such laws in general have the common vice of attempting to over-ride the provisions of the Federal Constitution and of usurping to the states, powers exclusively vested in the Federal Congress.

THE LAW IN QUESTION IS NOT AN INSPECTION ACT.

The inspection features are evasions and the law itself primarily a revenue measure.

The general power of the states, with respect to the adoption of inspection laws, is referable to Article 1, Section 10 of the Constitution. As originally interpreted, the power thus indicated was con-

fined to foreign, as contradistinguished from interstate commerce.

Turner v. Maryland, 107 U. S., 38.

Woodruff v. Parham, 8 Wal., 123, and cases cited.

In *Gibbons v. Ogden,* 9 Wheat. 1, the purely local character of such enactments was indicated in the following language:

> "They (inspection laws) act upon the subject, before it becomes an article of foreign commerce or of commerce among the states and prepare it for that commerce."

A similar view was indicated as late as the decision of *Bowman v. Chicago Railway Co., supra.*

In the period intervening between the two decisions last indicated, *New York v. Miln,* 11 Pet., 102, frequently cited as the leading case sustaining the constitutionality of such laws was decided. It is worthy of note that the question was not necessary for decision in that case as the local law there involved had reference exclusively to persons, which are concededly not subjects of commerce.

In the dissenting opinion of Mr. Justice Story, in which it is stated that Chief Justice Marshall concurred before his death, the following pertinent language was used:

> "But I cannot admit, that the states have authority to enact laws which act upon subjects beyond their territorial limits, or within those limits and which trench upon the authority of Congress in its power to regulate commerce. * * * * A state cannot make a regulation of commerce, to enforce its health laws, because it is a means withdrawn from its authority. It may be admitted that it is a means

adapted to the end; but it is quite a different question, whether it be a means within the competency of the state jurisdiction."

As late as the decision in *Voight v. Wright,* 141 U. S., 62, it was held that the right of the states to adopt inspection laws with respect to personal property imported from abroad or from another state, was an open one and had not received the sanction of any decision previously rendered by this Court.

Such was the state of the law down to the time of the decision of *Patapsco Guano Co. v. North Carolina,* 171 U. S., 345.

As this case will require further consideration later, it will suffice for present purposes to say that it sustained the general power of the states, in adopting inspection acts covering importations of the commodities of interstate commerce, in the following language:

"Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of the articles produced by the labor of a country and fit them for exportation, yet they are quite as often aimed at fitting them, or determining their fitness, for domestic use, and in so doing, protecting the citizen from fraud. Necessarily, in the latter aspect, such laws are applicable to articles imported into, as well as to articles produced within, a state."

In *Pabst Brewing Co. v. Crenshaw,* 198 U. S., 17, involving the application of a local law of the State of Missouri, providing for the inspection of beer, Mr. Justice White said:

"Whether the statute be regarded as a prohibition, as a regulation, as a license or *as an*

> *inspection law*, if it encroached upon the federal authority it would be void, and, on the contrary, in all or any of these aspects, the law would be valid so far as the Federal Constitution is concerned, if it did not so encroach."

Without pausing to comment on the seeming conflict thus indicated, it may be assumed argumentatively, in deference to the holding in the *Patapsco* case, *supra*, that the general power exists in the states to enact inspection laws with respect to commodities of interstate commerce.

The general character of the law considered in that case is indicated from the following excerpt from the opinion:

> "To protect agricultural interests against spurious and low-grade fertilizers was the object of this law, which simply imposed the actual cost of inspection necessarily varying with the agricultural conditions of the various years. *The label or tag could only be furnished after an analysis, the result of which was therein stated. In that light, the law practically required an analysis in every case.*"

The character of the local law may therefore be tested with respect to the criterion thus indicated.

It is a noteworthy circumstance that from the beginning to the end of this law, there is not a sentence providing that feeding stuffs *must be inspected* as a condition to their importation or sale within the state. There is not a single sentence from the beginning to the end of the Act which enjoins upon the State Chemist or any other designated state official, the duty of inspecting the commodities covered by its terms. If the requirement of inspection is to be found in the Act at all, it is

to be spelled out of the general language employed, by inference and implication from the general purposes indicated rather than anything expressly stated in its provisions. Moreover, even in this aspect, if the existence of the duty of inspection is to be ascertained by resort to inference, its performance is neither positively directed nor required.

Considered from the standpoint of an inspection act, the most that can be claimed for its terms is, that authority is created for inspection without providing for, or directing its exercise. The entire subject is, to all practical intents and purposes, left to the discretion of the local administrative officer (the State Chemist) without, as stated, enjoining its performance or providing the conditions by which it shall be guided or to which it shall be directed.

The first reference in the terms of the Act to inspection is found in Section 5, providing for the expenditure of the revenue derived from the Act. The language is general, merely prescribing that such revenues may be appropriated to carrying out the Act's provisions, including the employment of inspectors, etc., and the printing of bulletins giving the results of feeding stuff inspection.

The next reference is found in Section 6, containing the penal provisions, making it an offense to sell or offer for sale a commodity "which is found by an analysis made by or under the direction of the State Chemist to contain a smaller percentage of crude fat or crude protein than the minimum guarantee, etc."

Sections 7 and 8 provide that the State Chemist, or his deputy, is authorized to procure from any lot, parcel or package of such commodity, a quantity not to exceed two pounds and that any person attempting to prevent the obtaining of such samples shall be guilty of a misdemeanor.

Section 9 provides generally that the State Chemist is authorized to prescribe and enforce rules and regulations necessary to carry into effect the full meaning of the Act. Also, that he may refuse registration to a commodity falling below the standards.

Section 10 prescribes the duties of the prosecuting attorney and Section 11 defines the meaning of "Concentrated commercial feeding stuff" as employed in the Act.

Had the Act provided, which it does not, that all feeding stuffs shipped into the state should be inspected before sale, the official authority by which such inspection should be had, and provided for branding or marking the inspected product with the results of such inspection, an obviously different question would have been presented. Such inspection would be directed at ascertaining and apprising the public of the standard, quality or ingredients of the commodity. Such a law would inhibit neither importation nor sale and would not therefore, necessarily be held to impose conditions directly affecting commerce between the states. The power thus assumed to be exercised would be directly responsive to the effectuation of the purposes to which it owed its origin.

If such a law by its provisions went further and provided that products ascertained as a result of

the inspection, to be adulterated and impure, should be seized or condemned, its exercise might similarly be referable to the purposes of its origin, provided it did not undertake to usurp judicial powers, by attempting to rest the decision of the ultimate issue with local administrative officers, in such manner as to operate as a deprivation of property without due process of law.

The Act in question bears no analogy to such an one as last above suggested and considerations of validity of acts of the general character indicated have no tendency to sustain the law under review.

While denying for reasons sufficiently considered above, any authority upon the part of the legislature of a state to arbitrarily fix standards of manufacture of commodities entering into interstate commerce and making compliance with such standards a condition to the exercise of the commercial right, we may assume argumentatively, the existence of such a power. On this supposition, inspection would be aimed at ascertaining compliance with such standards. The concession of any such power, however, could not be taken to include the right on the part of the local legislature to delegate its legislative functions of determining such standards. This is apparently what was attempted and intended by the Act in question in providing, as it does in Section 1, for the ascertainment of the ingredients of manufacture, according to methods prescribed by the designated association of Chemists, and in Section 9, authorizing the State Chemist to refuse registration to a commodity below the "adopted standards." Such a provision is not inspection at

all but is rather referable to an assumed power of the state to regulate and determine for itself, the standards of commodities which may enter into interstate commerce within its borders, by delegating the determination of those standards to an administrative authority whose arbitrary decision is to be accepted as final and conclusive of the commercial right.

This feature of the case is sufficiently covered by the decision of *Scott v. Donald*, 165 U. S., 58, 93, 99, wherein this Court after alluding to the fact that the local Act contained certain provisions looking to the ascertainment of the purity of liquors and was susceptible of characterization as in the nature of an inspection law but that the provisions in this regard could not be held to redeem its requirements from the charge of being an obstruction to interstate commerce, said:

> "To empower a State Chemist to pass upon what the law calls the alcoholic purity of such importations by chemical analysis, can scarcely come within any definition of a reasonable inspection law."

But this is not all. It will be seen by reference to the Act's terms that the feature of analysis and inspection is virtually delegated to the foreign manufacturer who is required to file the verified analysis of his product. This, as stated in the *Vandercook* case, as well as the dissenting opinion in *Pabst Brewing Co. v. Crenshaw*, *supra*, is not inspection at all. In fact, it might be stated that the requirements of the Act in question possess even less of the elements of an inspection than was suggested in

either of the cases last indicated. The present Act dispenses even with the formality of submission of a sample and contents itself with an affidavit prepared by the manufacturer, covering the analysis or ingredients of the product.

Reduced to its lowest terms, inspection, as indicated in the terms of this law and considered from the ordinary precautionary motives assumed to call for its exercise, is the veriest subterfuge.

The manufacturer, seeking to comply with the law, in order to avail himself of the privilege of commerce in that state, files a verified analysis of his product. *The statement or certificate* and not the subject-matter or commodity to which it relates, is the object of inspection. If the verified analysis corresponds with the standards fixed by the gratuitously characterized association of chemists, it passes inspection and the tag or label issues which is to be affixed to the package in which the article is sold. This tag or label contains no reference whatsoever to any inspection. Its issuance does not presuppose *any inspection of the product.* As recited in Section 2, it contains the guaranteed analysis (not of the state official but the manufacturer) and shows that "the inspection fee has been paid."

So far as the purchaser of the commodity is concerned, there has been no inspection of the subject-matter of his purchase. He receives the assurance that *a paper analysis or inspection* has passed the state authority and that the inspection fee has been paid. If, therefore, the purchaser is in any wise safe-guarded against deception or fraud, the result

proceeds from something entirely foreign to legitimate inspection.

True, the Act authorizes the State Chemist to refuse registration if the affidavit does not meet or comply with required standards. This however, is entirely foreign to inspection for the obvious reason that precisely the same conditions could be imposed without any requirement for inspection whatsoever.

It is also true that the Act permits the administrative officers, as stated, to take samples of any commodity embraced within its terms. But this is not required and so far as anything stated in the terms of the Act is concerned, there is nothing imposing the requirement of actual inspection of any commoditiy thereby covered.

It is furthermore significant that if the administrative officers of the state, in the exercise of their purely optional or discretionary power, should actually inspect or examine a commodity and, as a result, find that it did not comply either with the verified analysis or the "standards," the Act is absolutely silent as respects notifying the general public of the results, except in so far as such notice would be given by the institution of criminal proceedings or the issuance of bulletins.

An inspection act which does not require an inspection, and the results of the administration whereof carry neither information nor protection to the general public, is a disguise and subterfuge.

In this aspect of the case, the questions are fully covered by the decision of the Court in the *Vandercook* case, *supra,* (170 U. S., 456) as well as the rea-

soning adopted by the minority of the Court in *Pabst Brewing Co. v. Crenshaw, supra,* (198 U. S., 34). In the former, the local law in question provided in substance, among other conditions to the right of shipment of liquor into the state, that a sample should be forwarded to the State Chemist who should immediately proceed to analyze the same and if found pure, should issue his certificates to be affixed to the shipment. Of this requirement the Court say:

> "It is claimed in argument that this law is an inspection law passed for the purpose of guaranteeing the purity of the product to be shipped into the state for the use of a resident therein, and therefore it is but a valid manifestation of the police power of the state exerted for the purpose of inspection only. But it is obvious that this argument is unsound, as the inspection of a sample sent in advance is not in the slightest degree an inspection of the goods subsequently shipped into the state. * * * It is hence beyond reason to say that the law provides for an inspection of the goods shipped into the state from other states, when in fact it exacts no inspection whatever. * * * A law of this nature must at least provide for some *inspection of the article* to justify its being an inspection law."

In the latter, the local law provided in substance, as that in the case at bar, for filing a verified analysis with a designated state official before shipment into the state. Of such a condition it was said:

> "The object of inspection laws is to require such examination of the thing inspected as will insure to the public a safe and wholesome article. Obviously to secure this the inspection must be made by officers appointed for that purpose; at least it cannot be delegated, as it

> virtually is in this case, to the manufacturer. The requirement of an affidavit, and the acceptance of this in lieu of an actual inspection, make the affiant, who is the manufacturer or his agent, the sole judge of the fact whether the liquor contains only the ingredients allowed by law. We cannot treat this as a *bona fide* inspection. To justify an inspection in law there must be an inspection in fact."

So far as the inspection element considered independently is concerned, the best test is to consider the present Act by excluding the requirement of registration as an unconstitutional and unenforceable condition on interstate commerce.

Thus considered, it will be at once perceived that the entire Act rests upon this unconstitutional requirement as its foundation, and with this feature excluded there is nothing of practical import left to which the term "inspection" can be fairly applied.

The first step in the system is registration including the verified analysis of the product. The second is predicated on the first in requiring the duplication of the verified analysis to be affixed to the package in which the commodity is contained. The second condition presupposes performance of the first and is meaningless without the latter. The requirement of guaranty of the product similarly refers back to the initial step.

The tax imposed is similarly referable to this original requirement in that it may only be affixed to the registered commodity and is not required to be issued by the state authority except upon the condition of such registration. The first section of the penal provisions of the Act is also referable to the

feature of registration, prescribing that the sale or offer for sale of any article not registered shall constitute an offense punishable by fine.

It is, of course, self-evident, that in considering this phase of the case, the self characterization of the Act is wholly immaterial. In the ascertainment of its natural effect and intendment, this Court is neither concluded by its self-styled objects, nor its local interpretation.

Mugler v. Kansas, 123 U. S., 623.
Railroad v. Husen, 95 U. S., 465.
Reid v. Colorado, 187 U. S., 137.

In the recent case of *Asbell v. Kansas,* 209 U. S., 251, it was said:

> "This court will assume the duty of determining for itself whether the statute before it is a genuine exercise of an acknowledged state power, or whether, on the other hand, under the guise of an inspection law it is really and substantially a regulation of foreign or interstate commerce which the Constitution has conferred exclusively upon the Congress."

In this connection it becomes necessary to consider the provisions of the Act resulting in the imposition of a tax on commodities entering into interstate commerce. Here it is of course self-evident that, if sustainable at all, the imposition of any such tax must be rested upon the assumption that the Act is a valid inspection act and the charge imposed with the *bona fide* purpose of defraying the cost of such inspection. Otherwise, any such imposition falls under the inhibition against taxation of interstate commerce.

Robins v. Shelby Taxing District, supra.

If, upon interpretation of its terms, it appears that under the guise of an ostensible inspection regulation the Act is in reality a revenue measure, it must fail.

Postal Telegraph Co. v. Taylor, 192 U. S., 64.
Postal Telegraph Co. v. Newhope, 192 U. S., 55.
Atlantic & Pacific Telephone Co. v. Philadelphia, 190 U. S., 160.

Similarly, if the Act be susceptible of interpretation as an inspection regulation, but the tax imposed has no reasonable reference to defraying the cost of inspection, it is a revenue measure and invalid as imposing a tax on commerce.

McLain v. Denver Ry., 203 U. S., 38.

The invalidity of the taxing feature in the present Act may be rested on the conclusion that the Act itself is not an inspection regulation and that the taxes thereby imposed have, therefore, nothing upon which they can be supported.

It is self-evident from the most causal inspection of its requirements that while such inspection as is or may be contemplated by its terms is *voluntary*, depending solely upon the discretion of the local adiministrative officers, the payment of the tax on each and every article entering into commerce is *compulsory*. The tax must, therefore, be paid wholly regardless of whether the commodity itself, or, for that matter, any commodity embraced within its terms, is inspected.

In fact, it is apparent that under such a statute, actual inspection could, at the option of the administrative officers of the state, be practically dispensed

with, or, at least, reduced to purely perfunctory form, while the revenue features would remain fixed, constituting a permanent exaction against all commodities, embraced within the terms of the Act, entering into commerce with the state.

Such legislation may be best characterized in the language of Mr. Justice Brown, delivering the opinion of the minority in the *Pabst case, supra:*

> "If the states may, in the assumed exercise of police powers, enact inspection laws, which are not such in fact, and thereby indirectly impose a revenue tax on liquors, it is difficult to see any limit to this power of taxation, or why it may not be applied to any other article brought within the state."

If further argument were required to demonstrate that the Act in question was a disguised revenue measure, it would only be necessary to contrast the indefiniteness of its requirements with respect to the assumed feature of inspection, with the care and detail observed in insuring the collection of the tax.

Section 3 of the Act is practically devoted to the administrative features of the taxing requirement. Sales of stamps are not required to be made except to the amount of $5.00 and multiples thereof. The condition of registration is, as above stated, the advance purchase of stamps to the minimum amount last mentioned.

By Section 4, a "checking system" is prescribed in the requirement that manufacturers shall make an annual verified report or return of the amount of sales during the preceding year. The last requirement is further fortified by that of Section 9,

in effect denying the commercial privilege within the state to any merchant or manufacturer failing to make the return.

By Section 2, every article sold or offered for sale must bear the stamp, and by Section 6, the sale within the state of a commodity to which the stamp is not affixed is made a criminal offense.

Finally, and as further characterizing the underlying purposes of the enactment, the appropriation of the revenues thus derived is not limited to the actual cost of inspection but, as above stated, authorized to be expended for the printing of bulletins (not specifically required by the terms of the Act to be printed) and for any other expenses of the Indiana Agricultural Experiment Station as authorized by law.

While, therefore, it may be said as result of the holdings in the *Patapsco* and *McLain* cases, *supra*, that the amount of the inspection charge is primarily a legislative and not a judicial question, the authorities above cited establish that where the real, as contradistinguished from the ostensible, purpose of the Act discloses the object of raising revenue, the Act itself must fail.

In the minority opinion in the *Pabst* case, *supra*, concurred in by Mr. Chief Justice Fuller, by whom the opinion of the court in the *Patapsco* case was written, it was said of the latter:

> "The reasonableness of the law as compared with the cost of inspection is made the test of the validity of the law."

In conclusion upon the feature of inspection, it may and doubtless will be claimed that the Act in

question, in its requirements, is substantially the same as that considered and upheld by this Court in the *Patapsco* case, *supra*. Neither the resemblance nor the identity of the requirements can be sustained if regard be had to what was actually required by the statute under consideration in the case cited and what those requirements were held to contemplate, both by the local court as well as by this court.

The Act there in question (See 171 U. S., 348) provided that before the commodity should be sold within the state, it should have plainly printed thereon, a label or stamp, "A copy of which shall be filed with the Commissioner of Agriculture, together with a true and faithful sample of the fertilizer or fertilizing material * * * * Also the chemical composition of the contents of such package * * * *together with the date of its analyzation* and that the requirements of the law have been complied with."

The analysis here required to be filed with the state official and *the results of which were to be affixed to the commodity* was, and was held by this court to be, that of the local authority designated by the Act's terms. Thus it was held as stated by this court:

> "The label or tag could only be furnished after an analysis, the result of which was therein stated. In that light, the law practically required an analysis in every case. (P. 359)"

This, for reasons heretofore sufficiently discussed, is vastly different from the requirement of the present Act in which inspection and analysis are not re-

quired by the state authority; the analysis to be filed with the State Chemist is that of the manufacturer or merchant and the tag or label discloses not the result of an official analysis but of that of the merchant or manufacturer himself. Neither the Act itself, therefore, considered in the *Patapsco* case, nor the conclusions of the Court sustaining it, have any tendency to support the Act under consideration.

The most therefore that can be said for an Act such as that in question is, as stated in *Scott v. Donald, supra,* that it is in the nature of an inspection act, wholly failing however, to make provision for the single essential requirement which would justify its interpretation as such.

THE ACT IN QUESTION AS APPLIED TO INTERSTATE COMMERCE IS SUPERSEDED AND ANNULLED BY THE ACT OF CONGRESS OF JUNE 30TH, 1906, (34 STAT. L., 768) KNOWN AS THE PURE FOOD AND DRUG ACT.

It has been too frequently decided by this court to require argument or citation of authority, that where jurisdiction with respect to a subject matter is vested in Congress by the Constitution, the laws of Congress, enacted in the exercise of the power thus delegated, constitute the supreme law of the land, and, of necessity, supersede and annul local legislation in the same field.

As recently as *Chicago Ry. v. United States,* 219 U. S., 486, this principle was indicated in the following language:

> "The transactions, in respect of which the Government seeks relief, being interstate in their character, the acts of Congress as to such transactions are paramount. No state enactment can be of any avail when the subject of such transactions has been covered by an act of Congress acting within the limits of its constitutional powers. It has long been settled that when an 'act of the legislature of a State prescribes a regulation of the subject repugnant to and inconsistent with the regulation of Congress, the state law must give way, and this without regard to the source of power whence the state legislature derived its enactment.' This results, Chief Justice Marshall said in *Gibbons v. Ogden*, 9 Wheat. 1, as well from the nature of the Government as from the words of the Constitution."

See also *Asbell v. Kansas*, 209 U. S., 251, 255.

That the exclusive power as respects the regulation of interstate commerce is vested in Congress and that the delegation of this authority to the Federal Government excludes its exercise by the states, is settled. That this result obtains, even in the absence of direct or affirmative legislation by Congress, is equally established from application of the principle that silence by Congress is to be taken as tantamount to an indication on its part that such commerce is to be free and untrammeled.

Bowman v. Chicago Ry., supra, and cases cited.

Where, therefore, local legislation is susceptible of no other interpretation than as a direct and immediate restriction upon, or regulation of, the exercise of the commercial right, its invalidity is sufficiently attested by the considerations above indicated. We are now however, to approach the sub-

ject from a somewhat different standpoint, proceeding from the conception that local legislation enacted in the exercise of the police power and aimed at conserving the welfare or protecting the health of the citizens of the state, may be sustained where it is fairly and reasonably directed at the accomplishment of the purpose indicated in the absence of legislation by Congress.

For present purposes, we need not pause to inquire whether the principle last indicated has proceeded from the application of a rule originally limited to cases of concurrent jurisdiction proper and the extension of that rule by analogy, to embrace cases where the jurisdiction of Congress is exclusive.

> See however, *Sturgis v. Crowninshield,* 4 Wheat., 122.

Regardless of the source from which local power may, in such cases, be assumed to poceed, it is established that its exercise is conditioned on the fact that Congress has not legislated upon the subject. As a necessary consequence it follows, and is well established, that when Congress exercises its prerogatives, the results, as stated, constitute the paramount law and local legislation covering the same field is annulled.

As said in *Reid v. Colorado,* 187 U. S., 137:

> "It is quite true * * * that the transportation * * * is a branch of interstate commerce and that any specified rule or regulation is respect of such transportation, which Congress may lawfully prescribe or authorize and which

> may properly be deemed a regulation of such commerce, is paramount throughout the Union. So that, when the entire subject * * * is taken under direct national supervision * * * all local or State regulations in respect of such matters and covering the same ground will cease to have any force, whether formally abrogated or not; and such rules and regulations as Congress may lawfully prescribe or authorize will alone control. *Gibbons v. Ogden*, 9 Wheat. 1, 210; *Morgan v. Louisiana*, 118 U. S., 455, 464; *Hennington v. Georgia*, 163 U. S., 299, 317; *New York Ry. v. New York*, 165 U. S. 628, 631; *Missouri Ry. v. Haber*, 169 U. S., 613, 626; *Rasmussen v. Idaho*, 181 U. S., 198, 200."

In the light of these principles, it is necessary to determine the scope and effect to be ascribed to the Congressional legislation above indicated. If, as a result of that examination, the conclusion shall be reached that Congress, by the enactment in question, intended to exercise its jurisdiction in a field in which concededly exclusive power is vested in it by the Constitution and to regulate and prescribe a uniform system for commerce as respects the articles embraced within the Act's terms, the conclusion of the illegality of local legislation addressed at the same subject matter, is established.

The purpose of the Act is seemingly sufficiently, if not conclusively, indicated by its title as follows:

> "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous or delterious foods, drugs, medicines and liquors and *for regulating traffic therein*, and for other purposes."

To regulate traffic is significant of the exercise of the power, jurisdiction with respect whereof, is

vested exclusively in Congress.

Upon principle, it may be stated that where such power has been exercised, except in so far as restrictions and conditions are thereby imposed upon commerce, its silence is to be interpreted as indicative that no other or further restrictions should obtain.

In the light of these considerations, the terms of the Congressional Act may be briefly examined.

By its First Section, the manufacture within any territory or the District of Columbia, of any article of food or drug, which is adulterated or misbranded within the meaning of the Act, is made a misdemeanor.

The limitation in this Section was obviously suggested by the fact that Congress has no jurisdiction over the subject of manufacture within the various States.

By Section 2, it is provided that the introduction into any State from any other State or from any foreign country of any article of food, or drug, which is adulterated or misbranded within the meaning of the Act, is prohibited and that any person who shall ship, or deliver for shipment, or who shall receive from any other State, or shall deliver in original, unbroken packages, or who shall sell or offer to sell the same, containing such adulterated or misbranded foods or drugs, shall be guilty of a misdemeanor.

It is clear that by this Section, Congress intended to exercise its jurisdiction in respect to regulating interstate commerce and provide against such

commerce even in the case of unbroken and original packages where the subject matter consisted in either adulterated or misbranded commodities.

By Section 3, it is provided that the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor, shall make uniform rules and regulations for carrying out the provisions of the Act including the collection and examination of samples of all foods and drugs entering into interstate commerce.

By Section 4, it is provided that the examination of samples shall be made in the Bureau of Chemistry of the Department of Agriculture for the purpose of determining whether such commodities are adulterated or misbranded, and if, as a result of such examination, it is ascertained that either of the suggested conditions exist, notice shall be given to the party from whom the sample was obtained and opportunity afforded him to be heard. If it appears that any of the provisions of the Act have been violated, it is made the duty of the Secretary of Agriculture to certify the facts to the proper United States District Attorney.

By Section 5, upon such certification, it is made the duty of each District Attorney to whom a violation of the Act has been reported, to commence proceedings in the proper Courts of the United States against the offending party.

By Section 6, the term "Drug" as used in the Act is provided to include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary and any substance or

mixture of the substances intended to be used for the cure, mitigation or prevention of disease of either *man or other animals.*

By the same Section, the term "Food" as employed in the Act is provided to include all articles used for food, drug, confectionery or condiment *by man or other animals,* whether simple, mixed or compound.

By Section 7, the Act defines the meaning of the term "Adulteration" as therein employed.

As applied to foods, the following conditions are indicated:

1st. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

2nd. If any substance has been substituted wholly or in part for the article;

3rd. If any valuable constituent of the article has been wholly or in part abstracted;

4th. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed;

5th. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health;

6th. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

By Section 8 the term "Misbranded" as employed in the case of foods, as follows:

1st. If it be an imitation of, or offered for sale under the distinctive name of another article;

2nd. If it be labeled or branded so as to deceive or mislead the purchaser, etc. (The balance omitted as not material).

3rd. If in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

4th. If the package containing it, or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular.

The last subdivision contains a proviso not presently material, concluding however with the following words:

> "That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient, to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding."

By Section 9, it is provided that no dealer shall be prosecuted under the Act's provisions, provided he can establish a guaranty from the wholesaler, jobber or manufacturer from whom he purchased, to the effect that the article was not adulterated or misbranded within the meaning of the Act.

The remainder of the Section is presently immaterial.

By Section 10, it is provided that any article of food, drug or liquor that is adulterated or misbranded within the meaning of the Act and is a subject of interstate commerce, may be condemned under proceedings thereby provided.

By Section 11, a similar provision, differing in matter of administrative detail is made with reference to articles of foreign commerce.

By Section 1 of the Agricultural Appropriation Act of June 30th, 1906, further detailed provisions are made for the investigation of the composition, adulteration, false labeling or false branding of foods, drugs, beverages, condiments and ingredients of such articles, when deemed by the Secretary advisable.

From the foregoing analysis of the Act's terms, it is self evident that it was the legislative purpose to conprehend in the broadest manner and the fullest extent, the safe-guarding of the public against the manufacture and sale of all articles, whether classified as foods or drugs and intended for the use or consumption of man or other animals. The safeguarding process thus contemplated has been extended to both the shipment and sale of all such articles so far as the same are within or under the jurisdiction of Congress, which, for our present purposes, covers and embraces all articles of interstate commerce.

Comparing its requirements with those ordinarily found in the exercise of what are popularly term-

ed, "The general police powers," we find inhibitions covering the following essential features:

1st. Articles of intrinsically unwholesome character, including those compounded or mixed with substances deleterious to health;

2nd. Deceptions or frauds of any kind resulting from substitution or imitation of standard and established products in a manner calculated to deceive;

3rd. Adulteration in the several particulars mentioned in the Act's terms, the first provision of which is here presently material, providing against the presence of substances reducing, lowering or injuriously affecting the article's quality or strength;

4th. Misbranding, covering the general field of deception through the medium of false, misleading or inaccurate labels or markings;

5th. Provisions for inspection and analysis, coupled with those making the violation of the Act's terms a criminal offense.

If we omit matter of administrative detail, it must seemingly be conceded that the legislation of Congress just considered, covers and embraces the same field as that involved in the Indiana law in question.

The Congressional Act is comprehensive, intended to cover the entire field of foods and drugs, while that of the Local Law is limited, directed at a sin-

gle commodity or class of such commodities. That the former includes in its general terms the particular comodities covered by the latter, must be conceded. It must similarly be conceded that tested from the standpoint of an exercise of the police power, the local law must be held and construed as aimed at the same evils as those covered by the Congressional Act. By its terms, the local law is obviously aimed at the prevention of adulteration and misbranding, as well as at maintaining certain standards for the class of commodities therein embraced, by preventing the admixture therewith of deleterious or unwholesome substances as well as others calculated to reduce or lower their standards or injuriously affect its quality or strength.

If sustainable at all, the validity of the local legislation must be predicated of the accomplishment of these general purposes. Its administrative details are incidental. In its last analysis, the law, in determining whether it falls within or without any acknowledged local power, must be referred to the substantive purposes of its enactment. We are thus brought to the proposition which may be thus succinctly stated; that a Federal and State law, referable to the exercise of the same general power, are co-existent, both aiming at the accomplishment of the same end, differing only in matter of what, for convenience, may be termed administrative detail, the one conceded to rightfully affect interstate commerce and the other claimed and asserted to affect such commerce as within the exercise of the reserved police power of the State.

To what extent the Court may take judicial cognizance of the rules and regulations prescribed by the Department of Agriculture in respect to administering the terms of the Federal law, we need not at present discuss. It is, however, self-evident, from an examination of the Act's terms, as to what such regulations must involve in their general features to effectuate the obvious purpose of the Act's requirements.

We are thus brought face to face with the obvious practical difficulty, that so far as affects interstate commerce and the conditions precedent to its exercise, we are confronted with two distinct systems. As respects the character of the commodities entering into commerce, two separate standards are prescribed; one conforming to the determination of the administrative officers to whom the power in that behalf is delegated by the Federal Act; the other, to that determined by the local administrative authority.

It is wholly immaterial for our present purposes that the latter might adopt or approve similar standards to those accepted by the former. We are here dealing with a question of power and not with the precise method of its exercise. If the power conferred by the Indiana law extend no further than the duplication of the requirements of the Federal standards, its exercise is at once nominal and futile. If it is not thus confined, it must necessarily presuppose the existence of an independent power in the local administrative body which could override, supersede or supplement in its require-

ments, the Federal Departmental regulation. Upon the latter supposition, while violation of the requirements of the Federal Law would expose the violator to criminal prosecution, compliance therewith would have no practical efficacy, for no benefit or advantage would accrue commercially if other and differing regulations and standards could be prescribed by each State and criminal consequence be visited for non-compliance therewith.

Thus construed, we should have the following results: That the merchant or manufacturer whose commodity, by reason of its being within the jurisdiction of the Federal Department as a subject-matter of interstate commerce and who has complied with all regulations both as respects standards of manufacture as well as the brands and labels under which his commodity is offered for sale, may be met at the threshold of each State with the imposition of additional requirements, ignoring those prescribed by the Federal Law and substituting entirely different standards, both as respects the features of manufacture and branding or labeling.

This is precisely the condition presented by the Indiana statute. By its terms the Federal Law makes no provision with reference to registration. Whether this feature would be within the purview of the rules and regulations for administering the Act's terms, we need not pause to inquire.

The Federal Law makes no requirement as to the precise form in which the commodity shall be dressed or labeled as a condition to its sale, beyond the general requirement indicated above that it

shall not be labeled in such manner as shall be calculated to deceive.

The Federal Law makes no requirements as to the payments of a stamp tax or duty, or the affixing of stamps to the article as a condition to its sale. After, therefore, the manufacturer or merchant engaged in interstate commerce has satisfied every requirement of the Federal Law, he is met at the threshold of the State of Indiana with each of these requirements which are made conditions precedent to legally exercising the right of interstate commerce within the limits of that State.

In addition, if the Indiana Act be, as claimed by those in authority, an Inspection Act, he must subject his commodity not alone to the inspection of the Federal but to the State officials as well. If this be so, what purpose shall we assume was subserved by the Federal Inspection? Is it not apparent that upon any such hypothesis, the national is subordinated to the local power in a field where the former is supreme?

Had it been the intention of Congress to subordinate its own powers in these respects to the powers of the various States, would it not have been more natural for it to have enacted a law surrendering its jurisdiction and giving to the States, as was done with reference to the liquor traffic, the almost unlimited power of local police regulation?

The answer would seem so obvious as to require neither comment nor argument. The self-evident purpose of Congress in adopting the Act under consideration, was to exercise its paramount jurisdic-

tion as respects interstate commerce. The character of the enactment leaves no reasonable room for doubt that except as provided and regulated by its own terms, interstate commerce in the commodities therein embraced was not to be subject to interference by the exercise of varied and differing police regulations on the part of various States. Otherwise, the Title of the Act as one "Regulating Traffic" is a misnomer.

An Act can hardly be said to regulate traffic where its requirements are subordinated to those of varying state legislation, inhibiting, restricting or imposing conditions precedent to the carrying on of that traffic. The Federal law cannot be construed as paramount and supreme where the exercise of the rights thereunder provided for and recnized, is dependent upon the will and dictation of another sovereign power.

Tested by these considerations, it is seemingly clear that legislation of the character of that presented by the Indiana law in question, contravening, as does the latter, the provisions of the Federal enactment, must be held null and void.

It may however, and doubtless will be claimed, that, conceding full force and effect to the Federal enactment, the validity of the local law may be rested on the theory that its requirements are not in conflict with the Federal Act and that it is to be construed as in the nature of auxiliary, supplementary or complementary legislation, aimed at the same objective purpose as that indicated by the Federal enactment.

As far as our observations have extended, this theory of auxiliary legislation with respect to a subject-matter confided exclusively to the jurisdiction of Congress, was first propounded in *Missouri etc. Ry. v. Haber*, 169 U. S. 613.

It was again indicated in *Reid v. Colorado*, 187 U. S., 137, *supra*.

Whatever may be claimed from the general language of the opinions last cited, the results must be interpreted with reference to the precise questions there presented and decided. The decision in each of those cases was predicated of the effect of an Act of Congress, which, as interpreted by the Court, was not intended to comprehend or embrace the entire subject-matter of transportation or commerce in the subjects (diseased animals) embraced within its terms. What was said by the Court therefore, in these opinions must be limited by this interpretation of the Federal enactment and cannot be extended to cover the case where the legislation of Congress is comprehensive, leaving no room for inference of the intendment that the subject was left to further, and what may be termed supplementary, legislation by the States.

The controlling principle was stated in *Hall v. DeCuir*, 95 U. S., 485, 498, as follows:

> "Differences of opinion may exist as to the extent and operation of the national law regulating commerce among the several States, but none, it is presumed, will venture to deny that it is regulated very largely by congressional legislation. Admit that, and it follows that the legislation of Congress, if constitutional,

must supersede all State legislation upon the same, and, by necessary implication, prohibit it, except in cases where the legislation of Congress manifests an intention to leave some particular matter to be regulated by the several States. (*Cooley v. Board of Wardens*, 12 How. 299).

Decisive authority for that proposition is found in the unquestioned decisions of this court. Such were the views of Judge Story more than thirty-five years ago, when he said, if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State legislatures have a right to interfere, and, as it were, *by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose.* (*The Chusan*, 2 Story, 466; *Sinnot v. Davenport*, 22 How., 227).

In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. (*Prigg v. Pennsylvania*, 16 Pet., 539; *Gibbons v. Ogden*, 9 Wheat. 1; *White's Banks v. Smith*, 7 Wall., 646)."

The same principle was applied in *The Roanoke*, 189 U. S., 185, 198, wherein it was stated:

"Although it is equally true that where Congress, having the power, has exercised it but incidentally, and obviously with no intention of covering the subject, the States may supplement its legislation by regulations of their own *not inconsistent with it.*"

See also *Easton v. Iowa*, 188 U. S., 220.

Sinnot v. Davenport, 22 How., 227.

In *Morgan v. Louisiana,* 118 U. S., 455, local quarantine regulation was sustained but it will be observed that the result was predicated of the Act of Congress of 1799, Title 58 of the Revised Statutes, recognizing State quarantine laws.

In *Plumley v. Massachusetts, supra,* the claim of conflict between congressional and State legislation was similarly resolved on consideration (1) that the Federal regulation was incidental, and, (2) that express reference was made by the Act to the Internal Revenue laws providing in substance that the payment of the tax thereby imposed, should not exempt a person from any penalty or punishment provided by the laws of any state for carrying on business in the taxed commodity or to authorize the carrying on or conduct of such business contrary to the local law.

In *Asbell v. Kansas, supra,* the congressional legislation in question obviously covered the entire field with respect to interstate commerce in the subject-matter there involved. Local legislation in that case, of similar import, had been enacted and the question was presented, of its validity. The general rule of the paramount authority of the Federal legislation and the consequent inefficacy of local legislation, covering the same subject-matter, was broadly affirmed.

The local legislation in that case had, however, expressly recognized the requirements of the Federal Act and provided that compliance with the conditions of the latter, should be sufficient com-

pliance with the requirements of the local law. For this reason the law was sustained.

On principle, if the question were pertinent to any question involved in the case at bar, we should unhesitatingly urge reconsideration of the results indicated in this case. Candor compels the statement that we confess our inability to comprehend how the validity of an independent local system, concededly regulating interstate commerce, with respect to a subject-matter in which Congress has exercised its exclusive jurisdiction, can be predicated of the fact that the local legislation recognizes the Federal law. Seemingly, express recognition of the paramount law in such a case could have no other force or effect, so far as the validity of the local statute was concerned, than if it were absent. Such recognition is compulsory and enjoined, if not assumed, whether recognized or not.

But it is unnecessary to follow this phase of the subject for the obvious reason that no such condition is disclosed by the local legislation here in question.

To render the conclusion in the *Asbell* case here applicable, would require recognition by the local law of compliance with the Federal regulations as the equivalent or substitute for compliance with its own terms in respect to interstate commerce.

While the local law here in question was not adopted until after the Federal enactment and must be, therefore, held to have been enacted with knowledge of the latter, no provision qualifying its arbitrary requirements is made. Moreover, the

most casual inspection of the terms of the local law shows that as applied to interstate commerce, recognition of the terms of the Federal Act and acceptance of compliance with the latter's terms, as a substitute for its own requirements, would leave nothing of substantive character in its provisions. From whatever standpoint therefore, the subject be approached, there is seemingly no escape from the inevitable conclusion. If the legislation of Congress be held as claimed, comprehensive and as intended to embrace and cover the subject of commerce between the States in the commodities indicated, the local legislation must fail as asserting jurisdiction in a field where that of Congress is exclusive.

If, on the other hand, the Federal legislation be not susceptible of as broad an interpretation as that claimed, it must be given full force and effect in so far as it has prescribed conditions regulating commerce in the commodities covered by its terms. If this result presupposes the right of the States to supplement the requirements indicated by the Congressional Act, it does not presuppose the right to prescribe restrictions or regulations of commerce conflicting with those prescribed by Congress.

Such conflict, in addition to the matters heretofore considered, is sufficiently indicated upon consideration of the circumstance, that, as applied to the commodities covered by Acts, compliance with the Federal law creates no rights whatsoever so far as commerce with the State of Indiana is concern-

ed. On the contrary, if the local law be sustained, its requirements are exclusive in determining the conditions to the exercise of the commercial right, within the state.

In conclusion upon this phase of the case, it is, we think, self-evident, from the consideration of the terms of the Federal Act, that it was adopted to relieve the intolerable conditions growing out of the vast array of local legislation in the various States, imposing almost innumerable restrictions and requirements upon the commodities of interstate commerce.

That its manifest purpose was to substitute, for these varied and distinct systems, a single comprehensive system, applicable throughout the entire country. Enacted in the exercise of a conceded power and that a power frequently alluded to as one of the most important in leading up to the adoption of the Federal Constitution, the Act should receive an interpretation which will carry out and effectuate its obvious purposes and result in the realization, so far as the classes of commodities embraced with in its terms are concerned, that, as respects commerce, the United States are a single nation.

REGARDLESS OF THE CONSTITUTIONAL QUESTION, COMPLAINANT WAS ENTITLED TO APPROPRIATE EQUITABLE RELIEF UPON THE ALLEGATIONS OF THE BILL.

For reasons sufficiently indicated above, this phase of the case will not require consideration if the contentions above advanced of the unconstitu-

tionality of the Indiana law are sustained. For reasons sufficiently obvious from the authorities heretofore considered, it is wholly immaterial what character of action was taken by the appellee in the attemted enforcement of the law's provisions, if the law itself, which must furnish the source of the authority for such action, is unconstitutional.

On the other hand, argumentatively assuming the law's constitutionality, the allegations of the bill present the question of the right to appropriate equitable relief from the attempted or threatened enforcement of its provisions, where the same are wholly inapplicable to the business or class of commodities against which, by reason of erroneous and extra-judicial interpretation of its terms, it is attempted to be enforced.

In other words, if appellee, acting in ostensible conformity to the law's provisions, has sought to extend its requirements beyond anything legitimately prescribed by its terms and such action has resulted in irreparable loss, for which no adequate redress may be had at law, equity is the appropriate forum and relief by injunction will be granted.

Scully v. Bird, supra.

It will hardly be claimed that any local enactment of the character in question can be held to invest in a local administrative officer, the judicial functions of the law's interpretation or the cases to which it applies. The law is the measure of the administrative authority and any attempted extension of that authority outside and beyond the field

legitimately covered by its terms, is lacking in legal sanction and presents a case for appropriate equitable relief.

American School of Magnetic Healing v. McAnnulty, 187 U. S. 94.

It remains, therefore, in this aspect of the case but to apply these principles to the facts disclosed by the present record.

The case, as heretofore indicated, arose and was decided on demurrer to the Bill. For all present purposes therefore, in the ascertainment of the controlling principles, the allegations are to be taken as admitted.

In substance and for present purposes, these allegations may be summarized as follows, that

> "On or about the 15th day of November, 1889, (complainant) commenced the manufacture and sale of medicinal preparations, one of which has ever since been known and called 'International Stock Food' and is now sold in every State in the Union as well as in many foreign countries R-1."
>
> That "he has invested large amounts of money in building up and thoroughly establishing in the State of Indiana a large and lucrative trade among the retail druggists and others in said State in said medicinal preparation. * * * That said International Stock Food possesses valuable and effective curative properties. * * *"
>
> That it "is composed of various finely powdered roots, herbs, seeds and barks, but the proportions of said ingredients to each other and the manner of combining them is a secret formula * * * of great value * * * obtained at great expense though many years of experimenting * * * and the disclosure to the com-

petitors * * * would greatly damage and injure the business in which he has invested at the present time over one million dollars.

"That because of the great value of said medicinal preparation * * * it has come to be used very extensively by the public throughout the United States as well as throughout the State of Indiana; * * * That the commercial or trade name 'International Stock Food' is neither used by your orator nor taken to be by retail druggists and those who purchase and use said medicinal preparation as descriptive of foods or feed of any kind, but * * * is well known to the public as merely a trade name and is exclusively used by the public as a medicine for domestic animals" (R-2).

After general allegations reciting that the commodity has been investigated by various of the Administrative Departments of the Federal Government and ascertained to be and taxed as a medicine and the adoption of the local law of Indiana in question, the Bill continues:

"That defendant * * * is the State Chemist of the State of Indiana and that he is claiming, asserting and pretending that the preparation so manufactured and sold * * * is one of such concentrated commercial feeding stuffs as are mentioned in and covered by said Act" (R-5).

The Bill then alleges generally that the defendant, in accordance with the decision indicated, has demanded compliance with the terms of said Act by complainant as respects the commodity in question.

The allegations continue:

"That said defendant has sent or caused to be sent, broadcast throughout the State of In-

diana to dealers and others who are customers, directly and indirectly, of plaintiff, many thousand circular letters warning them against the sale of said preparation and threatening that prosecutions will be instituted against all persons engaged in the sale thereof, unless and until plaintiff shall have complied with the provisions of said Act, as above stated. * * * That many hundreds of persons so engaged in selling plaintiff's said preparation have already discontinued their purchases and sales of said preparation because of the fear of criminal prosecution induced by the threats of said defendant, as aforesaid, and that large numbers of those who are yet handling said preparation and are yet buying and selling same in said State will be hereafter induced by such threats to discontinue the sale thereof unless defendant is restrained, as aforesaid, from further circulation of such threatening literature and from all other acts calculated to induce complainant's said customers to believe that by purchasing and selling said preparation, they expose themselves to such threatened prosecution."

General allegations follow indicating the composition of said commodity which is neither prepared nor sold as a feed stuff and neither has or is claimed to have any nutritive substances other than those employed as diluents to render the medicinal ingredients more palatable. Also that directions in all cases for the commodity's administration as a medicine are contained in or upon each package thereof.

It will hardly be contended that a commodity can be brought within the scope of those embraced and covered by the terms of the local law by the arbitrary decision of any local administrative au-

thority. It would seem so obvious as to require neither comment nor argument that whether a given commodity were within or without the scope of the Act's terms, would turn upon the dual consideration (1) of the commodities embraced within the Act, a question to be ascertained exclusively from the interpretation of its terms, and (2) the nature or character of the commodity in question itself, necessarily to be ascertained in a proper case upon consideration of the particular facts.

Coming to the Act itself, the character of commodities intended to be covered by its terms is sufficiently indicated by its Title. They are conclusively indicated by Section 11, as follows:

> "The term 'concentrated commercial feeding stuff' as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, dairy feeds, starch feeds, sugar feeds, dried brewers' grains, malt sprouts, dried distillers' grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover meals, alfafa meals and feeds, peavine meal, cotton seed meal, velvet bean meal, sucrene, mixed feeds and mixed meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds; but it shall not include straw, whole seeds, unmixed meals made directly from the entire grains

of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other flours."

It is clear from the context that it was intended to be, and was, in fact limited in its operation and effect, to articles or substances used for foods for domestic animals, etc., and nothing therein justifies the assertion that it was intended to be applicable to or embrace medicinal preparations, neither possessing nor claiming to possess nutritive qualities.

Under the arbitrary and assumed power exercised by the appellee in the case at bar, if that power may be sustained, it is self-evident that any and every veterinary remedy or preparation regardless of its character, could be brought within the terms and requirements of the Act, or excluded from the commerce of the State as in the case at bar, by threats of prosecution.

The anomalous result is thus presented that an Act, obviously aimed at disclosing the nutritive qualities of commodities required by its terms to be disclosed, can be extended to a class of commodities possessed of no nutritive features, as to which last, compliance with the terms of the Act is obviously impossible.

In fact, it will be readily observed if regard be had to the requirements of the first section of the Act relating to registration and the disclosure of the quantities of crude fat and crude protein contained in the registered commodity, that compliance is impossible in respect to a commodity containing neither the elements of fat nor protein.

Upon the allegations of the Bill therefore, reduced to its last analysis, the defendant, in the ostensible performance of his administrative duties, has required of complainant as a condition to the sale of his commodity within that state, compliance with a condition which cannot be complied with except by misrepresenting the character of the product.

Any such result is an anomaly and no justification therefore, can be found upon consideration of the Act's terms.

It may, and doubtless will be urged in support of the defendant's action or ruling, that the commodity in question is termed "International Stock Food." It is an all-sufficient answer to any such claim to state that the arbitrary designation of a commodity does not conclude its character or establish it as embraced within a class from which it is intrinsically differentiated.

Nothing in the terms of the Act refers to such a condition even if the contention were otherwise possessed of any force or effect. Nothing in its provisions refers to a case where the arbitrary name or title of a commodity indicates, or may be taken to indicate, that it is of the general character of the commodities indicated in the enactment. The latter is, by its terms, expressly limited to specific commodities of the character therein indicated, used for the purposes thereby specified.

If the subject were one pertinent or necessary for consideration in the determination of the issues here presented, an investigation will disclose that

the term "Stock Food" has been used for many years in contradistinction to the term "Feeds" or "Stock Feeds," the latter indicating articles intended to be administered or used for their qualities of nutrition and the former, applied exclusively to medicinal preparations (R-2, Par. III).

The feature last considered, however, needs no particular consideration in the determination of the equities arising under the circumstances disclosed and presented by the present Bill.

Reduced to its lowest terms, we think it must be apparent, that what the defendant has sought to accomplish in this case, has had reference to his own self-conceived ideas of the extent to which the terms of the Act should be carried, in order to effectuate his own ideas of its purposes.

Upon the allegations of the Bill, which must be taken as admitted by the demurrer, the commodity of appellant is wholly without the scope of the law in question and the ruling of appellee in seeking to extend the provisions of that law to something entirely foreign to its terms, was illegal.

For the foregoing reasons, it would seem clear that whether the case be considered from either the standpoint of the unconstitutionality of the law, or the illegality of the acts of appellee thereunder, the ~~demurrer~~ decree of the Circuit Court should be reversed.

Respectfully submitted,

M. H. BOUTELLE AND

MILLER, SHIRLEY & MILLER,

Solicitors and Counsel for Appellant.

ACTS 1907, CHAPTER 206, PAGE 354.

INDIANA.

An Act to provide for the inspection and analysis of, and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana; to prohibit the sale of fraudulent or adulterated concentrated commercial feeding stuffs; to define the term, concentrated commercial feeding stuffs; to provide for guarantees of the ingredients of concentrated commercial feeding stuffs; for the affixing of labels and stamps to the packages thereof, as evidence of the guarantee and inspection thereof; to provide for the collection of an inspection fee from the manufacturers of or dealers in concentrated commercial feeding stuffs; to fix penalties for the violation of the provisions of this act, and to authorize the expenditure of the funds derived from the inspection fees.

Section 1. Be it enacted by the General Assembly of the State of Indiana, that before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Indiana, the manufacturer, importer, dealer, agent or person who causes it to be sold, or offered for sale, by sample, or otherwise, within this State, shall file with the State Chemist of Indiana at the Indiana Agricultural Experiment Station, Purdue University, a statement that he desires to offer such concentrated commercial feeding stuff for sale in this State, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufac-

turer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, the ingredients from which the concentrated commercial feeding stuff is compounded, and the minimum percentage of crude fat and crude protein allowing one per cent. of nitrogen to equal six and twenty-five hundredths per cent. of protein, and the maximum percentage of crude fibre which the manufacturer, or person offering the concentrated commercial feeding stuff for sale guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States.

Sec. 2. Any person, company, corporation or agent that shall sell or offer, or expose for sale, any concentrated commercial feeding stuff in this State, shall affix, or cause to be affixed to every package or sample of such concentrated commercial feeding stuff in a conspicuous place on the outside thereof a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent, and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuff in the package, the name, brand, or trademark under which the concentrated commercial feeding stuff is sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis stating the minimum percentage of crude fat and crude protein,

determined as described in section 1, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent, shall also affix a stamp purchased from the State Chemist, showing that the concentrated commercial feeding stuff has been registered as required by section 1 of this act, and that the inspection tax has been paid. When concentrated commercial feeding stuff is sold in bulk a tag as hereinbefore described, and a State Chemist stamp shall be delivered to the consumer with each one hundred pounds, or fraction thereof; Provided, That for wheat bran a special stamp covering fifty pounds shall be issued on request, and one such stamp, attached to the tag hereinbefore mentioned, shall be delivered to the purchaser with each fifty pounds or fraction thereof.

Section 3. The State Chemist shall register the facts set forth in the certificate required by section 1 of this act in a permanent record, and shall furnish stamps or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered at such times and in such numbers as the manufacturers or agents may desire: Provided, That the State Chemist shall not be required to sell stamps or labels in less amount than to the value of five dollars ($5.00) or multiples of five dollars for any one concentrated commercial feeding stuff; Provided, further, That the State Chemist shall not be required to register any cer-

tificate unless accompanied by an order and fees for stamps or labels to the value of five dollars ($5.00) or some multiple of five dollars; Provided, further, That such stamps or labels shall be printed in such form as the State Chemist may prescribe; Provided, further, That such stamps or labels shall be good until used.

Sec. 4. On or before January 31st of each year, each and every manufacturer, importer, dealer, agent or person, who causes any concentrated commercial feeding stuff to be sold or offered or exposed for sale in the State of Indiana shall file with the State Chemist of Indiana a sworn statement, giving the number of net pounds of each brand of concentrated commercial feeding stuff he has sold or caused to be offered for sale in the State for the previous year ending December 31st; Provided, That when the manufacturer, jobber or importer of any concentrated commercial feeding stuff shall have filed the statement aforesaid, any person acting as agent for said manufacturer, importer or jobber, shall not be required to file such statement.

Sec. 5. For the expense incurred in registering, inspecting and analyzing concentrated commercial feeding stuffs, the State Chemist shall receive for stamps or labels furnished, one dollar per hundred; Provided, That for wheat bran a special stamp as required by section 2 of this act shall be furnished at fifty cents per hundred. The money for said stamps, or labels, shall be forwarded to the said State Chemist, who shall pay all such fees received by him to the director of the Indiana Agricultural

Experiment Station, Purdue University, by whom they shall be paid into the treasury of said Indiana Agricultural Experiment Station, the Board of Control of which shall expend the same, on proper vouchers to be filed with the Auditor of State in meeting all necessary expenses in carrying out the provisions of this act, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins giving the results of the work of feeding stuff inspection, as provided for by this act, and for any other expenses of said Indiana Agricultural Experiment Station as authorized by law. The Director of said Experiment Station shall make to the Governor, on or before February 15th of each year, a classified report showing the total receipts and expenditures of all fees received under the provisions of this act.

Sec. 6. Any person, company, corporation or agent that shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the State Chemist as required by section 1 of this act, or which does not have affixed to it the tag and stamp required by section 2 of this act, or which is found by an analysis made by or under the direction of the State Chemist to contain a smaller percentage of crude fat or crude protein than the minimum guarantee, or which shall be labeled with a false or inaccurate guarantee, or who shall adulterate any concentrated commercial feeding stuff with foreign mineral matter or other foreign substance, such as rice hulls, chaff,

mill sweepings, peanut shells, corn bran, corn cob meal, oat hulls, oat clippings, or other materials of less or of little or no feeding value without plainly stating on the label hereinbefore described, the kind and amount of such mixture, or who shall adulterate with any substance injurious to the health of domestic animals, or who shall alter the stamp, tag or label of the State Chemist, or shall use the name and title of the State Chemist on a stamp, tag or label not furnished by the State Chemist, or shall use the stamp, tag or label of the State Chemist the second time, or shall refuse or fail to make the sworn statement required by section 4 of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial feeding stuff in which the composition of the same may be involved a certified copy of the official analysis signed by the State Chemist shall be accepted as *Prima facie* evidence of the composition of such concentrated commercial feeding stuff; Provided, That nothing in this act shall be construed to restrict or probihit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or as preventing the free, unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix concentrated commercial feeding

stuff for sale, or to prevent the State Chemist, or the Indiana Agricultural Experiment Station, or any person or persons deputized by said State Chemist, making experiments with concentrated commercial feeding stuffs for the advancement of the science of agriculture.

Sec. 7. The State Chemist or any person by him deputized is hereby empowered to procure from any lot, parcel or package of any concentrated commercial feeding stuff offered for sale or found in Indiana a quantity of concentrated commercial feeding stuff not to exceed two pounds; Provided, That such sample shall be drawn during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff or of some person claiming to represent the owner.

Sec. 8. Any person who shall prevent or strive to prevent the State Chemist, or any person deputized by the State Chemist, from inspecting and obtaining samples of concentrated commercial feeding stuff, as provided for in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offiense.

Sec. 9. That State Chemist is hereby empowered to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the

materials of which it is made, or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted for concentrated commercial feeding stuffs. The State Chemist is further empowered to refuse to issue stamps or labels to any manufacturer, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in this State and refuse to submit the sworn statement required by section 4 of this act.

Sec. 10. It shall be the duty of every prosecuting attorney to whom the State Chemist shall report any violation of this act to cause proceedings to be commenced against the person or persons so violating the act, and the same prosecuted in the manner required by law.

Sec. 11. The term "concentrated commercial feeding stuff" as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, baize feeds, dairy feeds, starch feeds, sugar feeds, dried brewers' grains, malt sprouts, dried distillers' grains, dried beet refuse, hominy feeds, cerealine feeds, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover meals, alfalfa meals and feeds, peavine meal, cotton seed meal, velvet bean meal, su-

crene, mixed feeds and mixed meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds; but it shall not include straw, whole seeds, unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other flours.

Sec. 12. All laws and parts of laws in conflict with this act are hereby repealed.

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[redacted]

Supreme Court of the United States.

OCTOBER TERM, 1910.

[redacted]

MARION W. BANAGE,
Appellant,

[redacted]

WILLIAM [redacted], Jr., State Comptroller and Board of Indiana,
Appellee.

APPELLEE'S BRIEF.

THOMAS M. HONAN,
Attorney-General.

[redacted]
Solicitor and Counsel for Appellee.

File No. 21,231.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 245.

MARION W. SAVAGE,
Appellant,
v.
WILLIAM J. JONES, JR., STATE CHEMIST OF THE STATE OF INDIANA.
Appellee.

APPELLEE'S BRIEF.

Appellant challenges the validity of the act of the General Assembly of Indiana, approved March 9, 1907, claiming that said act is unconstitutional, because:

First. It is a violation of that provision of the Constitution which gives Congress the power to regulate commerce between the several States.

Second. It deprives appellant of his property without due process of law in violation of section one, article fourteen, of the Constitution.

The alleged unconstitutionality of this law as being in contravention to article fourteen of the Constitution is not discussed by appellant in his brief and we may assume that the assignment of error based thereon is waived.

Appellant shows by his bill that he can not be injured, except incidentally, by the operation of this law.

"It is the settled law of this court that one who would strike down a state statute, as violative of the Federal Constitution, must bring himself, by proper averments and showing, within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates to deprive him of rights protected by the Federal Constitution." *Southern Railway Co.* v. *King*, 217 U. S. 534.

It must appear that the law operates upon him or his property directly, and not incidentally. In the case of *Hooker* v. *Burr*, 194 U. S. 419, this court said:

"We have lately held (therein following a long line of authorities) that a party insisting on the invalidity of a statute, as violating any constitutional provision, must show that he may be injured by the unconstitutional law before the courts will listen to his complaint. If, instead of showing any injury, the plaintiff shows that he cannot possibly be injured, he cannot of course ask the interference of the court."

Again, in the opinion in the case of *Hatch* v. *Reardon*, 204 U. S. 160, we find the following:

"But there is a point beyond which this court does not consider arguments of this sort, for the purpose of invalidating the tax laws of a State on constitutional grounds. * * * It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, * * *."

The class to whom protection is guaranteed by that provision of the Constitution giving Congress the right to regulate commerce among the several States, is necessarily that class who engage in interstate commerce. Unless a person belongs to that class, engaged in interstate commerce, he would have no interest in a law regulating such commerce, and would have no right to attack a state law undertaking to regulate interstate commerce on the ground of its unconstitutionality.

The bill in this case shows that the appellant has not engaged in, and does not engage in interstate commerce. The allegation of his bill on this question is as follows, as found near the top of page 6 of the printed record:

"And your orator further shows that the sales made by your orator in the State of Indiana *are made at the city of Minneapolis, State of Minnesota, to be delivered free on board of cars at Minneapolis, Minnesota,* and delivered to purchasers and consumers within the State of Indiana in the original unbroken packages, freight being paid thereon by the consumers and purchasers."

This allegation shows that all sales of appellant's goods, which come to Indiana, are made by him in the State of Minnesota, and delivered in said State of Minnesota. His contracts are completed in Minnesota. He does not engage in interstate commerce in Indiana. He does not ship his wares into the State, they are shipped by the purchasers. His control is ended when the goods are delivered on board cars at the city of Minneapolis in the State of Minnesota. Although appellant claims to be engaged in interstate commerce, the allegations of his bill show he is not so engaged. Unless he is engaged in interstate commerce, he has no standing

to ask that this law be declared invalid because interfering with interstate commerce.

A complete copy of the local law is appended to appellant's brief, and we will not set it forth here.

Appellant's observation on page 19 of his brief that:

"As applied to interstate commerce, it will be observed that the provisions of the law make no distinction between importations into the State for *private,* as contradistinguished from public, use or consumption."

is not justified by any provision of this law. The law only applies to such feeding stuff as is sold, offered or exposed for sale. It does not apply to importations for *private* use, not *intended* for sale. Neither is it required by the law that such commodity be subjected to the provisions thereof, *before* its introduction or importation into the State of Indiana.

In determining the validity of this law, it should be considered in its entire scope, and not in detached paragraphs. It should be considered as a whole. Thus considered it will be seen to be a valid exercise of the police power, which is reserved to the States. Its general scope is indicated by its title, which is as follows:

"An act providing for the inspection and analysis of, and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana; to prohibit the sale of fraudulent or adulterated concentrated commercial feeding stuffs; to define the term, concentrated commercial feeding stuffs; to provide for guarantees of the ingredients of concentrated commercial feeding stuffs; for the affixing of labels and stamps to the packages thereof, as evidence of the guarantee and inspection thereof; to provide for the collection of an in-

spection fee from the manufacturers of or dealers in concentrated commercial feeding stuffs; to fix penalties for the violation of the provisions of this act, and to authorize the expenditure of the funds derived from the inspection fees."

This act is simply an inspection law designed to protect the public against the sale of adulterated concentrated commercial feeding stuff. It does not directly undertake to regulate interstate commerce. It does not undertake the regulation of the importation of commodities into the State. It imposes no conditions upon importations. It only provides that before concentrated commercial feeding stuff shall be sold, offered or exposed for sale in the State of Indiana, certain regulations must be complied with. Substantially all of the restrictions required by this law have heretofore been held by this court to be within the police power of a State.

It is only where the police power of a state law undertakes directly to regulate interstate commerce that it is invalid.

Mr. Justice Day, in the opinion in the case of *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 50, said:

"* * * It is equally well settled that a State or a Territory, for the same reasons, in the exercise of the police power, may make rules and regulations not conflicting with the legislation of Congress upon the same subject, and not amounting to regulations of interstate commerce. It will only be necessary to refer to a few of the many cases decided in this court holding valid, enactments of legislatures having for their object the protection, welfare and safety of the people, although such laws may have an effect upon interstate commerce. *M., K. & T. P. R. R. Co.* v. *Haber*, 169 U .S. 613, 635; *Chicago, Milwaukee, etc., R. R. Co.* v. *Solan*, 169 U.

S. 133; *Pennsylvania R. R. Co.* v. *Hughes*, 191 U. S. 477. The principle decided in these cases, is that a State or Territory has the right to legislate for the safety and welfare of its people, and that this right is not taken from it because of the exclusive right of Congress to regulate interstate commerce, except in cases where the attempted exercise of authority by the Legislature is in conflict with an act of Congress, or is an attempt to regulate interstate commerce. In *Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 345, it was directly recognized that the State might pass inspection laws for the protection of its people against fraudulent practices and for the suppression of frauds, although such legislation had an effect upon interstate commerce. The same principle was recognized in *Neilson* v. *Garza*, 2 Woods 287, a case decided by Mr. Justice Bradley on the circuit and quoted from at length with approval by Mr. Chief Justice Fuller in the Patapsco case."

In the case of *Plumley* v. *Massachusetts*, 155 U. S. 471, the court said:

"It was distinctly stated that the grant to Congress of authority to regulate foreign and interstate commerce did not involve a surrender by the States of their police powers."

In that case the court upheld a law of the State of Massachusetts, prohibiting the sale of oleomargarine, colored in imitation of butter. We quote again from the opinion in that case:

"In none of the above cases is there found a suggestion or intimation that the Constitution of the United States took from the States the power of preventing deception and fraud in the sale, within their respective limits, of articles, in whatever state manufactured." * * *

"If there be any subject over which it would seem the States ought to have plenary control, and the power to legislate in respect to which it ought

not to be supposed was intended to be surrendered to the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one State to another State. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of congress to regulate commerce among the States. For, as said by this court in *Sherlock* v. *Alling*, 93 U. S. 99, 103: 'In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.' Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. * * * And it may be said generally, that the legislation of a State, not directed against commerce, or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only directly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

The broad doctrine announced in the case of *Leisy* v. *Hardin*, 135 U. S. 100, and which is referred to by appellant in his brief, is expressly restrained in the case of *Plumley* v. *Massachusetts*, 155 U. S. 474. It is said there that the language used in the Leisy case, "does not justify the broad contention that a State is powerless to prevent the sale of articles manufactured in or brought from another State, and subjects of traffic and commerce, if their sale may cheat the people into purchasing something they do not intend to buy, and which is

wholly different from what its condition and appearance import." At the term succeeding the decision of *Leisy* v. *Hardin*, this court in *Rahrer's case*, 140 U. S. 545, 546, sustained the validity of the Act of Congress of August 8, 1890, C. 728, 26 Stat. 313, known as the Wilson Act, and in the light of the decision in *Leisy* v. *Hardin*, said, by the Chief Justice, that, "the power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity, is a power originally and always belonging to the States, not surrendered by them to the general government nor directly restrained by the Constitution of the United States, and essentially exclusive," and that it is not to be doubted that the power to make the ordinary regulations of police remains with the individual States and cannot be assumed by the national government.

In exercising its right to protect persons and property within its borders, a State has a right to require that any article of commerce, whether harmful or not, be sold for just what it is, and may require it to be labeled showing of what it is composed. In its regulations to prevent fraud and deceit and adulteration in the sale of articles, it may require an inspection not only of adulterated articles but of those which may not be adulterated. Inspection laws are not founded on the theory that the things on which they act are dangerous or noxious in themselves. In the case of *Bowman* v. *Chicago, etc., Ry. Co.*, 125 U. S. 488, it was said by the court, in speaking of such laws:

"They are confined to such particulars, as in the estimation of the Legislature and according to the customs of trade, are deemed necessary to fit the inspected article for the market, by giving to the

purchaser public assurance that the article is in the condition, and of that quality which makes it merchantable and fit for use or consumption."

Such object is obtained by requiring it to be sold for just what it is. Hence laws may be enacted by the States, requiring a statement of the ingredients of articles offered for sale to be attached thereto.

Mr. Justice Field in a concurring opinion in the Bowman case said:

"The State possesses the power to prescribe all such regulations with respect to the possession, use and sale of property within its limits, as may be necessary to protect the health, lives and morals of its people, and that power may be applied to all kinds of property, even that which in its nature is harmless."

In the case of *Heath & Milligan Co.* v. *Worst*, 207 U. S. 338, it was held that a statute of North Dakota, requiring manufacturers and vendors of mixed paints to label the ingredients composing them, is not unconstitutional. This law, as a matter of course, required the manufacturer or vendor of paints to undergo the additional expense of analyzing and labeling such paints. The right to require of a vendor of articles that they be properly labeled, showing their true constitutents, necessarily carries with it the power to impose the expense of such labeling on the vendor.

In the case of *Stilz* v. *Thompson*, 44 Minn. 271, it was held that the owner of an article offered for sale, as a proper police regulation for the benefit of the public in general, may be legally required to sell it for what it actually is, and that such owner is not entitled to the benefit of any additional market value which he may secure by concealing its true character. In this case it was held that baking pow-

der, containing alum, might be required to be so labeled.

In the case of *Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 345, this court held a law of the State of North Carolina valid, which in all of its essential legal requirements is very similar to the Indiana law. The North Carolina law provided: (p. 348):

"Every bag, barrel or other package of such fertilizers or fertilizing materials as above designated offered for sale in this State, shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the Commissioner of Agriculture, together with a true and faithful sample of the fertilizer or fertilizing material which it is proposed to sell, at or before delivery to agents, dealers or consumers in this State and which shall be uniformly used and shall not be changed during the fiscal year for which tags are issued, and the said label or stamp shall truly set forth the name, location and trade-mark of the manufacturer; also the chemical composition of the contents of such package, and the real percentage of any of the following ingredients asserted to be present, to wit: soluble and precipitated phosphoric acid, which shall not be less than eight per cent.; soluble potassa, which shall not be less than one per cent.; ammonia, which shall not be less than two per cent., or its equivalent in nitrogen; together *with the date of its analyzation*, and that the requirements of the law have been complied with; and any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth as above provided shall be liable to seizure and condemnation as hereinafter prescribed, and when condemned shall be sold by the board of agriculture for the exclusive use and benefit of the department of agriculture."

The law further provided that the department of agriculture should establish an agricultural experi-

ment and fertilizer control station, and should employ an analyst, skilled in agricultural chemistry. It was made the duty of the said chemist to analyze such fertilizers and products as may be required by the department of agriculture. He was required to make regular reports to said department of all analyses made by him. It was further provided that his salary should be paid out of the department of agriculture. Under this law the primary analysis was required to be made by the manufacturer or vendor of fertilizers; otherwise he could not know its chemical composition. In fact one of the things required to be placed on the label or stamp attached to each package of fertilizers offered for sale, was the date of its *analyzation*. The state chemist was not required to make such analyses except when required by the department of agriculture. It was provided in this law that any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth on the labels or stamps should be seized, etc. It was the evident intention of this law to require that the inspection of and analysis of fertilizers offered for sale should be made by the manufacturer or vendor of the same, and that a result of such analysis should be placed on labels or stamps attached to the packages in which such fertilizers should be sold.

This law required the payment of an inspection fee of twenty-five cents per ton on all fertilizers offered for sale. It was contended that the charge required to be paid was so excessive that the law could not be sustained as a legitimate inspection law; or as a valid exercise of the police power. In the opinion in that case the court said:

"But treating the question whether the charge of twenty-five cents per ton was shown to be so exces-

sive as to demonstrate a purpose other than that which the law declared, as a judicial question we are satisfied that comparing the receipts from this charge with the necessary expenses, such as the cost of analyses, the salaries of inspectors, the *cost of tags*, express charges, miscellaneous expenses of the department in this connection, and so on, we cannot conclude that the charge is so seriously in excess of what is necessary for the objects designed to be effected, as to justify the imputation of bad faith and change the character of the act.

Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of articles produced by the labor of a country and fit them for exportation, yet they are quite as often aimed at fitting them, or determining their fitness, for domestic use, and in so doing protecting the citizen from fraud. Necessarily, in the latter aspect, such laws are applicable to articles imported into, as well as to articles produced within, a State." (p. 354.)

Again the court say in this case: (p. 360 and 361.)

"Similar laws of other States, regulating the sale of fertilizers, have been sustained on the same ground.

In *Steiner* v. *Ray*, 84 Alabama 93, it was held that a statute regulating the sale of commercial fertilizers, when its controlling purpose was to guard the agricultural public against spurious and worthless compounds sometimes sold as fertilizers, and to furnish to buyers cheap and reliable means of proving the deception and fraud, should such be attempted, was strictly within the pale of police regulation and was constitutional. And this case was cited with approval in *Kirby* v. *Huntsville Fertilizer, etc., Co.*, 105 Alabama 529, where it was ruled that the sale of commercial fertilizers was void unless each sack, parcel or package was tagged as required by statute at the time the right of property passed from the vendor to the vendee." * * *

"The act of January 21, 1891, must be regarded,

then, as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection. It being competent for the State to pass laws of this character, does the requirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so, as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce.

In any view, the effect on that commerce is indirect and incidental, and 'the Constitution of the United States does not secure to any one the privilege of defrauding the public.' "

The Indiana law does not require the manufacturer or vendor of concentrated commercial feeding stuff to disclose any of his secret formulas. It only requires him to state the ingredients that enter into its composition. In the case of *Arbuckle* v. *Blackburn*, 113 Fed. Rep. 616-627, it was contended that, the article of food over which the controversy arose, in that case, was protected by letters patent of the United States, and that the manufacturer could not be required to give the ingredients of the same.

The Circut Court of Appeals, by Mr. Justice Day, in the opinion said:

"The facts that complainants produced Ariosa under a process protected by letters patent of the United States does not prevent it from coming within the operation of laws passed in the exercise of the police powers of the State. The enactment of laws for the protection of health and to prevent imposition in the sale of food products is within this power, and the fact that the process by which it is

made is protected by a patent, while it may prevent others from using it during the life of the patent, does not deprive the State of this power of regulation for the general good." *Patterson* v. *Kentucky*, 97 U. S. 501.

The judgment in this case was affirmed by this court on appeal. *Arbuckle* v. *Blackburn*, 191 U. S. 405.

It is contended that the law is unconstitutional because the inspection fee or tax is excessive. The bill does not allege that more money will be raised under this law than will be necessary to pay inspection fees. Unless the inspection fee is so unreasonably large as to show on its face the lack of good faith in the enactment of the law, the question of the amount of such inspection fee is a legislative and not a judicial question. In the case of *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 55, it is said:

"The law being otherwise valid, the amount of the inspection fee is not a judicial question; it rests with the Legislature to fix the amount and it can only present a valid objection when it is shown that it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law."

In the case of the *Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 355, the court quote from the decision of Mr. Justice Bradley in the case of *Neilson* v. *Garza*, 2 Woods 287, with approval as follows:

"How the question, whether a duty is excessive or not, is to be decided, may be doubtful. As the question is passed upon by the State Legislature, when the duty is imposed, it would hardly be seemly to submit it to the consideration of a jury in every case that arises. This might give rise to great di-

versity of judgment, the result of which would be to make the law constitutional one day, and in one case, and unconstitutional another day, in another case. As the article of the Constitution which prescribes the limit goes on to provide that 'all such laws shall be subject to the revision and control of Congress,' it seems to me that Congress is the proper tribunal to decide the question, whether a charge or duty is or is not excessive. If, therefore, the fee allowed in this case by the state law is to be regarded as in effect an import or duty on imports or exports, still if the law is really an inspection law the duty must stand until Congress shall see fit to alter it."

The Indiana law in no way conflicts with the Federal pure food and drug act. The Indiana law does not undertake to regulate interstate commerce. The two laws are not inconsistent. The Federal law can only apply to interstate commerce. If the two laws do conflict, the Indiana law would only be invalid in so far as it undertook to regulate interstate commerce. As has been shown, the Indiana law is only the exercise of the right of police power which is vested in the States, and which was never surrendered by the States to the Federal Government and is not an attempt to regulate interstate commerce. As we have pointed out, appellant's bill does not show that he is engaged in interstate commerce in the State of Indiana. His bill shows that all his sales, including delivery, are made in Minnesota. Appellant therefore has no right to insist, if such were the case, that the Federal pure food and drug act is in conflict with the Indiana law, as he is not engaged in interstate commerce in said State. The Indiana law being a valid exercise of the police power; of the right of that State to enact proper inspection laws, if the same were in conflict with the Federal pure food and drug act, the latter would

have to give way, as Congress has no right to pass laws prohibiting a State from exercising its police powers in enacting proper inspection laws. *Crossman* v. *Lurman*, 192 U. S. 190. The Indiana law is supplemental or complemental to the Federal pure food and drug act, and does not in any way conflict with the latter.

Appellant contends that "regardless of the constitutional question" he was entitled to appropriate equitable relief upon the allegations of his bill, because the provisions of the Indiana law are wholly inapplicable to the business or class of commodities sold by appellant, but that appellee is giving the provisions of the law an improper interpretation so as to improperly bring appellant's International Stock Food within its terms.

In the case of *Francis* v. *Flinn*, 118 U. S. 388, this court said:

"The whole gist of the complaint is that the defendants do not treat the plaintiff as having a right to use his vessel as a pilot-boat, and have publicly so stated, and that some of the parties mentioned have been subjected to suits for their acts in piloting. But if this be so, the plaintiff has a full remedy for his alleged wrongs in the courts of law. They furnish no ground for the interposition of a court of equity. If the plaintiff has a right to pilot vessels with his boat through the pass and is wrongfully interfered with by the defendants or others, he can prosecute them for the wrong. If his vessel is arrested in its passage, without lawful warrant, he can bring the defendants before the courts to answer for their conduct. If his pilots are duly licensed, and they are hindered or prevented from the exercise of their business, both he and they have the same means of redress which are afforded to every citizen whose rights are invaded and obstructed. If the publications in the newspapers are false and injurious, he can prosecute the publishers for

libel. If a court of equity could interfere and use its remedy of injunction in such cases, it would draw to itself the greater part of the litigation properly belonging to courts of law.

We think the court below should have sustained the demurrer of the defendants for want of equity in the bill."

The case of *Arbuckle* v. *Blackburn*, 113 Fed. Rep. 616, was affirmed by this court, 191 U. S. 405. We quote from the opinion of Mr. Justice Day in that case (p. 623):

"The complainants claim that their compound is not within the terms of the statute. The food commissioner wrongfully claims that it is. Upon this branch of the case the question is, may a court of equity entertain a bill to inquire into this matter, and, if it finds that the complainant is right in its contention, enjoin the food commissioner from instituting proceedings under the laws of Ohio? The jurisdiction of courts of equity has never been carried to this extent in authoritative decisions. On the contrary, the Supreme Court, in more than one instance, has denied such jurisdiction to a court of equity. * * * (p. 625.)

"To entertain the bill in this aspect would be to subvert the administration of the criminal law, and deny the right of trial by jury, by substituting a court of equity to inquire into the commission of offenses where it would have no jurisdiction to punish the parties if found guilty. It would be the extension of equity jurisdiction to cases where prosecutions in state courts by the state officers are sought to be enjoined, with a view to determining whether they shall be allowed to proceed under valid statutes in the courts of law. We think this an enlargement of the jurisdiction opposed to reason and authority. It is claimed, however, that conceding that a court of equity cannot enjoin the prosecution of criminal offenses, as a general thing, the rule is different when property rights are involved; and

we are cited to cases holding that equity has jurisdiction to enjoin acts likely to be destructive of property rights, although the acts complained of constitute infractions of the criminal law. This is quite a different proposition from enjoining criminal proceedings alleged to be *indirectly destructive of property rights.* Many criminal prosecutions may affect the property of the person accused. A property may be greatly injured by the wrongful and unfounded charge that it is used for immoral purposes. Such prosecution may destroy its rental value and prevent its sale, yet a court of equity could not usurp the right of trial which both the State and the accused have in a common-law court before a jury. Every citizen must submit to such accusations, if lawfully made, looking to the vindication of an acquittal and such remedies as the law affords for the recovery of damages. It is often a great hardship to be wrongfully accused of crime, but it is one of the hardships which may result in the execution of the law, against which courts of equity are powerless to relieve." (p. 626-7.)

"But it is argued that coffee treated so as to make Ariosa is a pure article of food, and a compound labeled as required by the statute. Again, the act is argued to be unconstitutional because of the construction put upon it by the food commissioner, and this "construction" is his contention that Ariosa is coffee so coated as to conceal damage or inferiority, and that it is not a compound or mixture within the meaning of the statute. These are the very questions the decision of which the statute vests in the discretion of the commissioner, as a preliminary matter, in determining to institute prosecutions in the enforcement of the law which he is charged to execute, leaving the guilt or innocence of the party charged to be decided by the proper tribunals when prosecutions are instituted under the law. The constitutionality of the act is to be determined by its language and purpose, and not by the alleged wrongful institution of prosecutions thereunder against those guiltless of a violation of its provisions. There

are cases, as insisted by the learned counsel for the complainant, where the operation of a statute constitutional in itself, as administered by the state authorities, may deprive the citizens of rights secured by the Constitution of the United States, where a Federal court will interfere by injunction to secure to persons aggrieved the benefits of the Federal Constitution; but they are not cases where a court of equity must draw to itself the administration of the criminal law of a State, sought to be enforced by the officers of the State, and thus determine whether crimes may be prosecuted under valid enactments, because a party may be able to satisfy the court that he is in fact innocent of the charge. Such a construction of the powers of a court of equity would result in a confusion of jurisdiction, and an embarrassment of the ordinary processes of the law without precedent. If this bill can be entertained, it remits to the Federal courts the supervision of the pure food laws of the States, and their dockets will be crowded with cases of those claiming that their particular articles of food and drink are not within the terms of the law.

Nor do we think that there is ground for injunction in the allegations of the bill that the food commissioner is publishing the fact that the product of the complainant is within the prohibition of the law. If this publication is made to those dealing in the article, it would be within the duty of the commissioner, in advising of contemplated prosecutions. If such publications are libelous, the law affords other means of redress."

In this case appellant asks that appellee be enjoined from prosecuting, or threatening to prosecute, other ersons, than appellant, for alleged violations of a criminal law. He invokes the aid of a court of equity, not in his own behalf but in behalf of others. He seeks to have a valid criminal statute set aside by a court of equity. A court of equity will not interfere with the administration of crim-

inal laws, except where they are void. A court of equity will not grant relief from the operation of a statute to a person who has no direct interest in the matter complained of, or where his interest is only incidentally involved.

It is contended that the standard by which the constituents of concentrated commercial feeding stuffs is to be determined is indefinite and might vary. If this contention were conceded, it would not affect the validity of this law; for as was said in the case of *Heath & Milligan Co.* v. *Worst*, 207 U. S. 358, it only "goes to the defect or incompleteness of the legislation, not to its legality." Inaccuracies in a law may be removed in the administration of the same or by legislative modification.

In this case appellant does not come into court with clean hands. He gives his product a false name. He calls that a food which he says is a medicine. The article is "misbranded" within the meaning of section 8 of the Federal pure food and drug act, as the package bears the statement "International Stock Food," which is, to say the least, misleading. It is misleading because it purports to be a food, while appellant claims that it is a medicine. His product is "misbranded," and he is not entitled to the aid of a court of equity; and the judgment of the circuit court should therefore be affirmed.

Respectfully submitted.

THOMAS M. HONAN,
Attorney-General.

EDWIN CORR,
Solicitors and Counselors for Appellee.

SAVAGE *v.* JONES, STATE CHEMIST OF THE STATE OF INDIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

No. 68. Argued January 18, 1912.—Decided June 7, 1912.

Where appellant, as complainant below, attacked as unconstitutional a state statute under which the sale of his product was interfered with by the state officer enforcing the statute, and a general demurrer for want of equity is sustained, this court has jurisdiction of the appeal; nor will the appeal be dismissed because the bill in one of its allegations asserted that complainant's product was not one of those specified in the act, if, as in this case, the bill also alleged that the proper state officer had construed the statute as applicable thereto.

Sales made in one State to be delivered free on board at a point therein, to be delivered to consumers in another State in the original unbroken packages, freight to be paid by purchaser, constitutes interstate commerce.

Commerce among the States is not a technical legal conception, but a practical one drawn from the course of business. Protection accorded to interstate commerce by the Federal Constitution extends to the sale by the receiver of the goods in the original packages.

An attack by state authorities upon purchasers of goods manufactured in and shipped from another State, inflicts injury upon the manufacturer by reducing the interstate sales, and if this result can only be prevented by complying with illegal demands, under an unconstitutional state statute, equity will grant relief.

Regulating the sale of food for domestic animals is properly within the scope of the state police power, and the vendors of such food are not deprived of their property without due process of law by a regulation requiring disclosure of ingredients and minimum percentage of fat and proteins, disclosure of the formula for combination not being required; and so *held* as to the statute of Indiana of 1907.

Quære whether a State can require disclosure of formulas for trade secret for mixture of a harmless article whose value depends upon the mixture.

While the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce, a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional because it may incidentally affect interstate commerce.

Where a state police statute involving inspection of goods is enforced by the affixing of stamps, it will not be held unconstitutional as a revenue measure in disguise if the bill does not allege any facts to show that the charge for stamps is unreasonable and the total sale is so much in excess of the cost of inspection as to impute bad faith.

One whose sales are so large as to require stamps far in excess of the minimum amount to be issued is not prejudiced by the requirement to purchase such minimum amount of stamps.

No state statute which even affects incidentally interstate commerce is valid if it is repugnant to the Federal Food and Drugs Act of June 30, 1906, the object of which is to prevent adulteration and misbranding and keep adulterated and misbranded articles out of interstate commerce.

Where an act of Congress relating to a subject on which the State may act also, limits its prohibitions, it leaves the subject open to state regulation as to the prohibitions which are unenumerated.

In determining whether a Federal act overrides a state law, the

entire scheme must be considered and that which needs must be implied has no less force than that which is expressed.

The intent of Congress to supersede the exercise by the States of their police power will not be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State.

The statute of Indiana regulating the sale, and requiring formula of ingredients of, concentrated commercial food for stock is a proper and reasonable exercise of legislative police authority for the protection of the people of the State. The act is not unconstitutional as depriving a vendor of such food who lives in another State and ships it therefrom to Indiana either as a regulation of, or burden upon, interstate commerce, as depriving any vendor thereof of his property without due process of law, or as a revenue measure beyond the power of the State, nor does the requirement for publishing the ingredients conflict in any manner with the Food and Drugs Act of 1906.

Although the Food and Drugs Act prohibits misbranding it does not require publication of ingredients, and in that respect the field is left open for state legislation.

THIS is an appeal from a decree of the Circuit Court sustaining a demurrer to the bill for want of equity. The suit was brought by Marion W. Savage, a citizen of Minnesota, to restrain the defendant, the State Chemist of Indiana, from taking proceedings to enforce an act of the General Assembly of that State (Acts 1907, chapter 206) as applied to the sales of the complainant's product, a preparation for domestic animals known as "International Stock Food." The act is set forth in the margin.[1]

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[1] Acts 1907, Chapter 206, Page 354, Indiana.

An Act to provide for the inspection and analysis of, and to regulate the sale of concentrated commercial feeding stuff in the State of Indiana; to prohibit the sale of fraudulent or adulterated concentrated commercial feeding stuffs; to define the term concentrated commercial feeding stuffs; to provide for guarantees of the ingredients of concentrated commercial feeding stuffs; for the affixing of labels and stamps to the packages thereof, as evidence of the guarantee and inspection thereof; to provide for the collection of an inspection fee from the

The bill alleges that the complainant has for many years been engaged in Minnesota in the manufacture of medic-

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manufacturers of, or dealers in concentrated commercial feeding stuffs; to fix penalties for the violation of the provisions of this act, and to authorize the expenditure of the funds derived from the inspection fees.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Indiana, the manufacturer, importer, dealer, agent or person who causes it to be sold, or offered for sale, by sample, or otherwise, within this state, shall file with the state chemist of Indiana at the Indiana agricultural experiment station, Purdue university, a statement that he desires to offer such concentrated commercial feeding stuff for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, the ingredients from which the concentrated commercial feeding stuff is compounded, and the minimum percentage of crude fat or crude protein allowing one per cent. of nitrogen to equal six and twenty-five hundredths per cent. of protein, and the maximum percentage of crude fibre which the manufacturer, or person offering the concentrated commercial feeding stuff for sale guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States.

SEC. 2. Any person, company, corporation or agent that shall sell or offer, or expose for sale, any concentrated commercial feeding stuff in this state, shall affix, or cause to be affixed to every package or sample of such concentrated commercial feeding stuff in a conspicuous place on the outside thereof, a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuff in the package, the name, brand, or trade-mark under which the concentrated commercial feeding stuff is sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis stating the minimum percentage of crude fat and crude protein, determined as described in section 1, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent, shall also affix the stamp purchased from the state chemist, showing

inal preparations, one of which is called "International Stock Food" and is sold in every State in the Union as

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that the concentrated commercial feeding stuff has been registered as required by section one of this act, and that the inspection tax has been paid. When concentrated commercial feeding stuff is sold in bulk a tag as hereinbefore described, and a state chemist stamp shall be delivered to the consumer with each one hundred pounds, or fraction thereof: *Provided*, That for wheat bran a special stamp covering fifty pounds shall be issued on request, and one such stamp, attached to the tag hereinbefore mentioned, shall be delivered to the purchaser with each fifty pounds or fraction thereof.

SEC. 3. The state chemist shall register the facts set forth in the certificate required by section one of this act in a permanent record, and shall furnish stamps or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered at such times and in such numbers as the manufacturers or agents may desire: *Provided*, That the state chemist shall not be required to sell stamps or labels in less amount than to the value of five dollars ($5.00) or multiples of five dollars for any one concentrated commercial feeding stuff: *Provided, further*, That the state chemist shall not be required to register any certificate unless accompanied by an order and fees for stamps or labels to the value of five dollars ($5.00) or some multiple of five dollars: *Provided, further*, That such stamps or labels shall be printed in such form as the state chemist may prescribe: *Provided, further*, That such stamps or labels shall be good until used.

SEC. 4. On or before January 31st of each year, each and every manufacturer, importer, dealer, agent or person, who causes any concentrated commercial feeding stuff to be sold or offered or exposed for sale in the State of Indiana shall file with the state chemist of Indiana a sworn statement, giving the number of net pounds of each brand of concentrated commercial feeding stuff he has sold or caused to be offered for sale in the state for the previous year ending with December 31st: *Provided*, That when the manufacturer, jobber or importer of any concentrated commercial feeding stuff shall have filed the statement aforesaid, any person acting as agent for said manufacturer, importer or jobber, shall not be required to file such statement.

SEC. 5. For the expense incurred in registering, inspecting and analyzing concentrated commercial feeding stuffs, the state chemist shall receive for stamps or labels furnished, one dollar per hundred: *Provided*, That for wheat bran a special stamp as required by section 2 of

well as in many foreign countries; that he has invested large amounts of money in building up a lucrative trade

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this act shall be furnished at fifty cents per hundred. The money for said stamps, or labels, shall be forwarded to the said state chemist, who shall pay all such fees received by him to the director of the Indiana agricultural experiment station, Purdue university, by whom they shall be paid into the treasury of said Indiana agricultural experiment station, the board of control of which shall expend the same, on proper vouchers to be filed with the auditor of state in meeting all necessary expenses in carrying out the provisions of this act, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins giving the results of the work of feeding stuff inspection, as provided for by this act, and for any other expenses of said Indiana agricultural experiment station as authorized by law. The director of said experiment station shall make to the governor, on or before February 15th of each year, a classified report showing the total receipts and expenditures of all fees received under the provisions of this act.

SEC. 6. Any person, company, corporation or agent that shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the state chemist as required by section 1 of this act, or which does not have affixed to it the tag and stamp required by section 2 of this act, or which is found by an analysis made by or under the direction of the state chemist to contain a smaller percentage of crude fat or crude protein than the minimum guarantee, or which shall be labeled with a false or inaccurate guarantee, or who shall adulterate any concentrated commercial feeding stuff with foreign mineral matter or other foreign substance, such as rice hulls, chaff, mill sweepings, peanut shells, corn bran, corncob meal, oat hulls, oat clippings, or other materials of less or of little or no feeding value without plainly stating on the label hereinbefore described, the kind and amount of such mixture, or who shall adulterate with any substance injurious to the health of domestic animals, or who shall alter the stamp, tag or label of the state chemist, or shall use the name and title of the state chemist on a stamp, tag or label not furnished by the state chemist, or shall use the stamp, tag or label of the state chemist the second time, or shall refuse or fail to make the sworn statement required by section 4 of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial

in Indiana among the retail druggists, many hundreds of whom were "buying, carrying in stock and retailing to

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feeding stuff in which the composition of the same may be involved a certified copy of the official analysis signed by the state chemist shall be accepted as prima facie evidence of the composition of such concentrated commercial feeding stuff: *Provided*, That nothing in this act shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or as preventing the free, unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or to prevent the state chemist, or the Indiana agricultural experiment station, or any person or persons deputized by said state chemist, making experiments with concentrated commercial feeding stuffs for the advancement of the science of agriculture.

SEC. 7. The state chemist or any person by him deputized is hereby empowered to procure from any lot, parcel or package of any concentrated commercial feeding stuff offered for sale or found in Indiana a quantity of concentrated commercial feeding stuff not to exceed two pounds: *Provided*, That such sample shall be drawn during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff or of some person claiming to represent the owner.

SEC. 8. Any person who shall prevent or strive to prevent the state chemist, or any person deputized by the state chemist, from inspecting and obtaining samples of concentrated commercial feeding stuff, as provided for in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense.

SEC. 9. The state chemist is hereby empowered to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted for concentrated commercial feeding stuffs. The state chemist is further empowered to refuse to issue stamps or labels to any manufacturer, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in this state

the public" the complainant's preparations; that the complainant's gross annual sales in Indiana amount to many thousands of dollars; that the "International Stock Food" possesses effective curative properties for various diseases of domestic animals and is composed of medicinal roots, herbs, seeds, and barks, combined by a secret formula of great value; and that the disclosure to his competitors of the proportion of the ingredients and the manner of combination would seriously injure his business; that the commercial designation "International Stock Food" is not used by the complainant as descriptive of feed of any kind, and is not so understood by retail druggists and purchasers, but is well known to the public as a trade name of a medicine for domestic animals protected under trade-

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and refuse to submit the sworn statement required by section 4 of this act.

SEC. 10. It shall be the duty of every prosecuting attorney to whom the state chemist shall report any violation of this act to cause proceedings to be commenced against the person or persons so violating the act, and the same prosecuted in the manner required by law.

SEC. 11. The term "concentrated commercial feeding stuff" as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, dairy feeds, starch feeds, sugar feeds, dried brewers' grains, malt sprouts, dried distillers' grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover meals, alfalfa meals and feeds, peavine meal, cotton seed meal, velvet bean meal, sucrine, mixed feeds, and mixed meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds; but it shall not include straw, whole seeds, unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other flours.

SEC. 12. All laws and parts of laws in conflict with this act are hereby repealed.

marks in the United States; that on investigations made by the United States internal revenue department it was determined that the preparation was not feeding stuff nor a condimental stock food, but was a proprietary or patent medicine within the meaning of the revenue laws of 1863 and 1898; and that subsequent to the enactment by Congress of the Food and Drugs Act of 1906 (June 30, 1906, 34 Stat. 768, c. 3915), the administrative officers of the United States Government duly determined that it was a medicine and not a food within the meaning of that act.

The bill then avers the passage of the act above mentioned by the legislature of Indiana and sets forth the provisions of §§ 1, 2, 8, 9 and 11. It is alleged that the defendant, the State Chemist of Indiana, is asserting that the complainant's manufacture is one of the concentrated commercial feeding stuffs covered by the act, and that it is the duty of the complainant to comply with its provisions with reference to its sale in Indiana, "and has stated and declared to your orator, and now threatens that unless your orator has attached in a conspicuous place on the outside of each package of your orator's said medicinal preparation offered for sale within the State of Indiana, a printed statement, clear and truthful, certifying among other things the name of the manufacturer and shipper, the place of manufacture, the place of business and chemical analysis stating the percentage of crude protein, crude fat and crude fiber contained in said preparation and have all its constituents determined by the methods adopted by the session of official agricultural chemists, and shall also state upon said package the names of each ingredient of which said preparation is composed, he will cause the arrest and prosecution of every person dealing or trading in the medicinal preparation of your orator within the State of Indiana." That the defendant has sent, or caused to be sent, broadcast

throughout the State of Indiana to dealers and others who are customers, directly or indirectly, of complainant many thousand circular letters warning them against the sale of said preparation and threatening that prosecution will be instituted against all persons engaged in the sale thereof, unless and until the complainant shall have complied with the provisions of said act.

It is also alleged that the sales made by the complainant "in the State of Indiana are made at the city of Minneapolis, State of Minnesota, to be delivered free on board of cars at Minneapolis, Minnesota, and delivered to purchasers and consumers within the State of Indiana in the original unbroken packages, freight being paid thereon by the consumers and purchasers." That unless restrained the defendant will continue to annoy and intimidate the numerous persons engaged in selling the preparation in Indiana, by threats of criminal prosecution, and will report to the various prosecuting attorneys of the State the sales that may come to his notice and instigate prosecutions of the sellers as violators of the statute, thereby obstructing the complainant in the conduct of his business in the State of Indiana and interfering with his property rights to his irreparable injury, for which there is no adequate legal remedy. That many hundreds of persons engaged in selling the preparation have already discontinued their purchases and sales because of the fear of criminal prosecution induced by the defendant's threats, and that large numbers of those who are still handling it will be induced by such threats to discontinue its sale.

The bill further avers that the complainant's preparation is not in any sense either concentrated commercial feeding stuff, or condimental stock feed, or a patent proprietary stock feed within the proper construction of the act of Indiana, and is not advertised as possessing nutritive properties or used except as medicine; that the complainant does not "claim that said medicinal preparation con-

tains any crude protein or crude fat;" that it does not contain, nor is it claimed on behalf of the defendant that it contains, any ingredient that is deleterious or injurious to animal life or health; that it is prescribed and administered in small doses as medicine and "that the only nutritive substance or ingredients . . . are employed as diluents in so small an amount as to produce no feeding effect whatever, but for the sole purpose of rendering medicinal bitter roots, herbs, barks and seeds more acceptable to the animal stomach;" that directions for use accompany each package and in every case there is a statement plainly showing that the preparation is to be used to cure disease and not in place of or as a substitute for any grain or feed. That nevertheless, the defendant, who in his official capacity is charged by law with the enforcement of the statute, has construed it to apply to complainant's product.

That under § 3 of the statute of Indiana the State Chemist is to register the facts set forth in the certificate required by § 1 as a permanent record and to furnish stamps or labels, showing such registration, to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered in amounts not less than the value of five dollars or multiples of five dollars for any one such product; that by § 5 the State Chemist is to receive one dollar for each one hundred stamps, and that the proceeds thus derived are to be paid into the treasury of the Indiana Agricultural Experiment Station to be expended in carrying out the provisions of the statute and for any other expenses of such station as authorized by law.

That the statute, and particularly §§ 1, 2, 7, 8 and 9, are repugnant to the Fourteenth Amendment of the Constitution of the United States in that they require manufacturers of proprietary stock feed and condimental feeds, arbitrarily, without compensation and without due proc-

ess of law, whether such preparation contain any poisonous or deleterious element or ingredient, to disclose the formulæ by which they are compounded, and the ingredients and proportions thereof, which embody valuable trade secrets; and that if the act is enforced against the complainant he will be deprived of his property contrary to the said Amendment.

That the statute also violates § 8 of Art. I of the Constitution of the United States as an unreasonable interference with interstate commerce in which the complainant is engaged.

That further, the statute is invalid under § 19 of Art. IV of the constitution of the State of Indiana in that the title does not express the requirement that manufacturers or dealers shall disclose the formulæ by which their products are manufactured or the ingredients or proportions.

That for many years the complainant's preparation has been offered for sale in packages of different sizes, holding respectively 24 ounces, 3 pounds, 6 pounds and 25 pounds; that under the terms of the statute the complainant would be required to pay the same amount of tax for a package of 24 ounces that other commodities and manufacturers thereof pay for a package of one hundred pounds; and that this discrimination is unreasonable and unconstitutional.

That the enforcement of the requirement as to the affixing of stamps and payment therefor is a tax upon the complainant's property and business, and is not a license fee determined by any reasonable requirement, or for the purpose of carrying out the inspection required, but, on the contrary, under the guise of a police regulation constitutes a measure for raising revenue for the general work and expense of the Indiana Agricultural Experiment Station. That the act is contrary to § 10 of Art. I of the Constitution of the United States, that no State shall without the consent of Congress lay any imposts or duties on imports,

except what may be absolutely necessary for executing its inspection law.

The bill prays that the defendant may be enjoined from taking any action against the complainant, interfering with his right to vend and convey his preparations in the State of Indiana, from instituting any proceedings to punish him for failure to comply with the defendant's demands, from giving out orally or in writing to the various prosecuting officers of the State, or to any other agents thereof charged with the enforcement of its law, or to the public, any threats of prosecution or information upon which prosecutions are requested, or may be based, and from otherwise seeking to prevent the conduct of the complainant's business in the State or to discredit the reputation of his remedy.

The defendant demurred to the bill upon the ground that it was wholly without equity, and that the court was without jurisdiction. Upon the former ground the bill was dismissed.

Mr. M. H. Boutelle for appellant:

Appellant is entitled to equitable relief. *Scully* v. *Bird*, 209 U. S. 481.

The constitutional question presented establishes the right of direct appeal from the decree of the Circuit Court to this court. *Scott* v. *Donald*, 165 U. S. 58; *Penn Ins. Co.* v. *Austin*, 168 U. S. 694; *Holder* v. *Aultman*, 169 U. S. 88; *Loeb* v. *Columbia Twp.*, 179 U. S. 472; *Spreckels Sugar Ref. Co.* v. *McClain*, 192 U. S. 397; *Mississippi R. R. Comm.* v. *Ill. Cent. Ry.*, 203 U. S. 335.

Every question arising upon the record is open for consideration on the present appeal. *Carey* v. *Hudson Ry. Co.*, 150 U. S. 181; *Horner* v. *United States*, 143 U. S. 576.

The Indiana statute constitutes an unlawful interference with and attempted regulation of interstate commerce. In so far as applicable to the subjects or commodities

of interstate commerce it is both regulatory and restrictive of that commerce. Its action and effect in this behalf is direct, as contradistinguished from indirect, in that by its terms it undertakes to impose as conditions precedent to the free and unrestricted enjoyment of the privileges of interstate commerce, the fulfillment of certain requirements. No State can impose conditions of this character. *Vance* v. *Vandercook*, 170 U. S. 438.

The power of the State is limited and measured by the constitutional inhibition against direct restriction or regulation of commerce amongst the several States. *Robbins* v. *Shelby District*, 120 U. S. 489; *West* v. *Kansas Gas Co.*, 221 U. S. 229.

It is no answer to say that the attempted exercise of such powers is referable to considerations appertaining to local police regulation and that their validity is attested by this circumstance. As applied to interstate commerce, the question still remains, whether, in the attempted exercise of otherwise concededly valid powers, that commerce has been directly regulated or restricted. *Asbell* v. *Kansas*, 209 U. S. 251, 254, 255; *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328, 334; *Walling* v. *Michigan*, 116 U. S. 446; *Adams Express Co.* v. *Kentucky*, 214 U. S. 218; *Leisy* v. *Hardin*, 135 U. S. 100; *Crossman* v. *Lurman*, 192 U. S. 189; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1.

While the act does not contain an express prohibition against importation and sale, prohibition is implied and its equivalent effected, by making compliance a condition to the right of importation and sale and visiting failure of compliance with criminal responsibility. If, under the guise of restricting the importation and sale of adulterated commodities, legislation may be adopted restricting and limiting the right of importation and sale of all commodities and conditioning the exercise of that right upon such formalities as each State may see fit to impose, the results would be to bring within the police power any article of

consumption that a State might wish to exclude. *In re Rahrer*, 140 U. S. 545; *Bowman* v. *Chicago Ry.*, 125 U. S. 465; *Collins* v. *New Hampshire*, 171 U. S. 30.

The law in question is not an inspection act. The inspection features are evasions and the law itself primarily a revenue measure. The general powers of the States, with respect to the adoption of inspection laws, is referable to Art. I, § 10 of the Constitution. As originally interpreted, the power thus indicated was confined to foreign, as contradistinguished from interstate, commerce. *Turner* v. *Maryland*, 107 U. S. 38; *Woodruff* v. *Parham*, 8 Wall. 123, and cases cited.

Inspection laws act upon the subject before it becomes an article of foreign commerce or commerce among the States and prepare it for that commerce. *Gibbons* v. *Ogden*, 9 Wheat. 1; *Bowman* v. *Chicago Ry., supra.*

As to the right of the States to adopt inspection laws with respect to personal property imported from abroad or from another State, see *Voight* v. *Wright*, 141 U. S. 62; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345; *Pabst Brew. Co.* v. *Crenshaw*, 198 U. S. 17.

Inspection which is virtually delegated to the foreign manufacturer who is required to file a verified analysis of his product, is not inspection at all. *Scott* v. *Donald*, 165 U. S. 58, 93, 99; *Vance* v. *Vandercook, supra;* and see dissenting opinion in *Pabst Brew. Co.* v. *Crenshaw, supra.*

In the ascertainment of the natural effect and intendment of the act this court is neither concluded by its self-styled objects nor its local interpretation. *Mugler* v. *Kansas*, 123 U. S. 623; *Railroad* v. *Husen*, 95 U. S. 465; *Reid* v. *Colorado*, 187 U. S. 137; *Asbell* v. *Kansas*, 209 U. S. 251.

The imposition of the tax must be rested upon the assumption that the act is a valid inspection act and the charge imposed with the bona fide purpose of defraying the cost of such inspection. Otherwise any such imposition

falls under the inhibition against taxation of interstate commerce. *Robbins* v. *Shelby District, supra; Postal Tel. Co.* v. *Taylor*, 192 U. S. 64; *Postal Tel. Co.* v. *New Hope*, 192 U. S. 55; *Atl. & Pac. Tel. Co.* v. *Philadelphia*, 190 U. S. 160; *McLain* v. *Denver Ry.*, 203 U. S. 38.

The act in question as applied to interstate commerce is superseded and annulled by the act of Congress of June 30, 1906, known as the Pure Food and Drug Act.

Where jurisdiction with respect to a subject-matter is vested in Congress by the Constitution, the laws of Congress, enacted in the exercise of the power thus delegated, constitute the supreme law of the land, and, of necessity, supersede and annul local legislation in the same field. *Chicago Ry.* v. *United States*, 219 U. S. 486; *Asbell* v. *Kansas*, 209 U. S. 251, 255.

The exclusive power as respects the regulation of interstate commerce is vested in Congress and the delegation of this authority to the Federal Government excludes its exercise by the States. This result obtains even in the absence of direct or affirmative legislation by Congress. *Bowman* v. *Chicago Ry.*, *supra*, and cases cited; *Sturgis* v. *Crowninshield*, 4 Wheat. 122; *Reid* v. *Colorado*, 187 U. S. 137.

Legislation of the character of that presented by the Indiana law, contravening as it does the provisions of the Federal enactment, must be held null and void.

Mr. Edwin Corr, with whom *Mr. Thomas M. Honan*, Attorney General of the State of Indiana, was on the brief, for appellee:

Appellant shows by his bill that he cannot be injured, except incidentally, by the operation of this law. It must appear that the law operates upon him or his property directly and not incidentally. *Southern Ry.* v. *King*, 217 U. S. 534; *Hatch* v. *Reardon*, 204 U. S. 160; *Hooker* v. *Burr*, 194 U. S. 419.

The class to whom protection is guaranteed by that provision of the Constitution giving Congress the right to regulate commerce among the several States, is necessarily the class who engage in interstate commerce. Unless a person belongs to that class he would have no interest in a law regulating such commerce and would have no right to attack a state law undertaking to regulate interstate commerce on the ground of its unconstitutionality. Appellant has not engaged in and does not engage in interstate commerce.

In determining the validity of this law, it should be considered in its entire scope, and not in detached paragraphs. It should be considered as a whole. Thus considered it will be seen to be a valid exercise of the police power, which is reserved to the States. The act is simply an inspection law designed to protect the public against the sale of adulterated concentrated commercial feeding stuff. It does not directly undertake to regulate interstate commerce. It does not undertake the regulation of importation of commodities into the State. It is only where the police power of a state law undertakes directly to regulate interstate commerce that it is invalid. *McLean* v. *Denver & R. G. R. Co.*, 203 U. S. 50.

The grant to Congress of authority to regulate foreign and interstate commerce did not involve a surrender by the States of their police powers. *Plumley* v. *Massachusetts*, 155 U. S. 471; *In re Rahrer*, 140 U. S. 545, 546.

In exercising its right to protect persons and property within its borders, a State has a right to require that any article of commerce, whether harmful or not, be sold for just what it is, and may require it to be labeled showing of what it is composed. In its regulations to prevent fraud and deceit and adulteration in the sale of articles, it may require an inspection not only of adulterated articles but of those which may not be adulterated. Inspection laws are not founded on the theory that the things on which

they act are dangerous or noxious in themselves. *Bowman* v. *Chicago Ry. Co.*, 125 U. S. 488; *Heath & Milligan* v. *Worst*, 207 U. S. 338; *Stilz* v. *Thompson*, 44 Minnesota, 271; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345.

The Indiana law does not require the manufacturer or vendor of concentrated commercial feeding stuff to disclose any of his secret formulas. It only requires him to state the ingredients that enter into its composition. See *Arbuckle* v. *Blackburn*, 113 Fed. Rep. 616–627, aff'd 191 U. S. 405.

Unless the inspection fee is so unreasonably large as to show on its face the lack of good faith in the enactment of the law, the question of the amount of such inspection fee is a legislative and not a judicial question. *McLean* v. *Denver & R. G. R. Co.*, 203 U. S. 55; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 355; *Neilson* v. *Garza*, 2 Woods, 287.

The Indiana law is supplemental or complemental to the Federal Pure Food and Drug Act and does not in any way conflict therewith. *Crossman* v. *Lurman*, 192 U. S. 190.

Appellant is not entitled to equitable relief upon the allegations of his bill. *Francis* v. *Flinn*, 118 U. S. 388; *Arbuckle* v. *Blackburn*, *supra*.

The contention that the standard by which the constituents of commercial feeding stuffs is to be determined is indefinite and might vary, even if conceded, would not affect the validity of this law, for it only goes to the defect or incompleteness of the legislation, not to its legality. *Heath & Milligan* v. *Worst*, 207 U. S. 358. Inaccuracies in a law may be removed in the administration of the same or by legislative modification.

Appellant does not come into court with clean hands. He gives his product a false name. He calls that a food which he says is a medicine. His product is misbranded and he is not entitled to the aid of a court of equity.

MR. JUSTICE HUGHES, after making the above statement, delivered the opinion of the court.

The principal contention in support of this appeal is that the statute of Indiana (Acts 1907, chapter 206), the provisions of which have been set forth, is an unconstitutional interference with the complainant's right to engage in interstate commerce.

A preliminary question arises with respect to the jurisdiction of this court, by reason of the allegation of the bill that the complainant's product is not a "concentrated commercial feeding stuff" within the true meaning of the act, and that so interpreted the statute would not apply. But it was also alleged that the State Chemist, who was authorized to enforce the statute, had construed it to be applicable to the commodity, which is commercially known as "International Stock Food;" and thus charged by the officer with the duty of obedience, the complainant in his bill challenged the constitutionality of the legislation. The grounds for the attack were not found in the conclusions reached by the officer, as to the nature of the article, in administering an act otherwise conceded to be valid (*Arbuckle* v. *Blackburn*, 191 U. S. 405, 414), but in the provisions of the statute itself as applied to the articles within its purview while in the course of interstate commerce. A general demurrer, for want of equity, was sustained, and in view of the substantial character of the contention the case must be regarded as one in which the law of a State is claimed to be in contravention of the Constitution of the United States. Act of March 3, 1891, 26 Stat. 826, c. 517, § 5; *Penn Mutual Life Insurance Co.* v. *Austin*, 168 U. S. 685, 694; *Loeb* v. *Columbia Township Trustees*, 179 U. S. 472, 478; *Lampasas* v. *Bell*, 180 U. S. 276, 282.

It is said that the complainant is not entitled to invoke the constitutional protection, in that he fails to show in-

jury. *Southern Railway Co.* v. *King*, 217 U. S. 524, 534. The argument rests upon the averment in the bill that his sales were made at Minneapolis, the goods "to be delivered free on board of cars" at that point, "and delivered to purchasers and consumers within the State of Indiana in the original unbroken packages, freight being paid thereon by the consumers and purchasers." In answer, it must again be said that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Co.* v. *United States*, 196 U. S. 375, 398; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512. It clearly appears from the bill that the complainant was engaged in dealing with purchasers in another State. His product manufactured in Minnesota was, in pursuance of his contracts of sale, to be delivered to carriers for transportation to the purchasers in Indiana. This was interstate commerce, in the freedom of which from any unconstitutional burden the complainant had a direct interest. The protection accorded to this commerce by the Federal Constitution extended to the sale by the receiver of the goods in the original packages. *Leisy* v. *Hardin*, 135 U. S. 100; *In re Rahrer*, 140 U. S. 545, 559, 560; *Plumley* v. *Massachusetts*, 155 U. S. 461, 473; *Vance* v. *Vandercook Co.* (No. 1), 170 U. S. 438, 444, 445; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 22–25; *Heyman* v. *Southern Railway Co.*, 203 U. S. 270, 276. An attack upon this right of the importing purchasers to sell in the original packages bought from the complainant, not only would be to their prejudice, but inevitably would inflict injury upon the complainant by reducing his interstate sales, a result to be avoided only through his compliance with the act by filing the statement and affixing to his goods the labels it required. According to the bill, the State Chemist had threatened the complainant that in default of such compliance he would cause the arrest and prosecution of every person dealing in the

article within the State and had distributed broadcast throughout the State warning circulars. If the statute of Indiana, as applied to sales by importing purchasers in the original packages, constitutes an unwarrantable interference with interstate commerce in the complainant's product, he had standing to complain, and was entitled to relief against enforcement by the defendant of the illegal demands. *Scott* v. *Donald*, 165 U. S. 107, 112; *Ex parte Young*, 209 U. S. 123, 159, 160; *Ludwig* v. *Western Union Telegraph Co.*, 216 U. S. 146; *Hopkins* v. *Clemson College*, 221 U. S. 636, 643–645; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 620, 621.

We are thus brought to the examination of the statute. The question of its constitutional validity may be considered in two aspects, (1) independently of the operation and effect of the act of Congress of June 30, 1906, c. 3915 (34 Stat. 768), known as "The Food and Drugs Act," and (2) in the light of this Federal enactment.

First. The statute relates to the sale of various sorts of food, for domestic animals, embraced in the term "concentrated commercial feeding stuff" as defined in the act. It requires the filing of a statement and a sworn certificate, the affixing of a label bearing certain information, and a stamp.

By § 1 it is provided, in substance, that before any such feeding stuff is sold, or offered for sale, in Indiana, "the manufacturer, importer, dealer, agent or person," selling or offering it, shall file with the State Chemist a statement that he desires to sell the feeding stuff, and also a sworn certificate, for registration, stating (a) the name of the manufacturer, (b) the location of the principal office of the manufacturer, (c) the name, brand or trade-mark under which the article will be sold, (d) the ingredients from which it is compounded, and (e) the minimum percentage of crude fat and crude protein, allowing one per cent. of nitrogen to equal six and twenty-five hundredths

per cent. of protein, and the maximum percentage of crude fiber which the manufacturer or person offering the article for sale guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States. The State Chemist is to register the facts set forth in the certificate in a permanent record (§ 3).

Section 2 provides that there shall be affixed to every package or sample of the article a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent and shall have plainly printed thereon (a) the number of net pounds of feeding stuff in the package, (b) the name, brand or trade-mark under which it is sold, (c) the name of the manufacturer, (d) the location of the principal office of the manufacturer, and (e) the guaranteed analysis stating the minimum percentage of crude fat and crude protein determined as described in § 1, and the ingredients from which the article is compounded.

A stamp purchased from the State Chemist, showing that the article has been registered and that the inspection tax has been paid, is to be affixed for each one hundred pounds or fraction thereof, special provision being made for the delivery of an equivalent number of stamps on sale in bulk. By an amendment of 1909, stamps are to be issued by the State Chemist to cover twenty-five, fifty and one hundred pounds (Acts 1909, chapter 46, p. 106). He is not required to sell stamps in less amount than to the value of five dollars, or multiples thereof, for any one feeding stuff, or to register any certificate unless accompanied by an order and fees for stamps to the amount of five dollars, or some multiple of that sum (§ 3). Sworn statements are to be filed annually of the number of net pounds of each brand of feeding stuff sold or offered for sale in the State (§ 4).

The price of the stamps under the original act was one

dollar per hundred; but by the amendment of 1909 (*supra*) the charge was made eighty cents per hundred, for stamps to cover one hundred pounds, and forty cents and twenty cents respectively for stamps to cover fifty and twenty-five pounds. The fees received are to be paid into the treasury of the Indiana Agricultural Experiment Station and expended "in meeting all necessary expenses in carrying out the provisions of this act, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins giving the results of the work of feeding stuff inspection, as provided for by this act, and for any other expenses of said Indiana agricultural experiment station, as authorized by law." A classified report of the receipts and expenditures is to be made to the Governor of the State annually (§ 5).

Any one selling, or offering for sale, any feeding stuff which has not been registered, and labeled and stamped as required by the act, or which is found by an analysis made by the State Chemist or under his direction to contain "a smaller percentage of crude fat or crude protein than the minimum guarantee," or is "labelled with a false or inaccurate guarantee," and any one who adulterates any feeding stuff "with foreign mineral matter or other foreign substance, such as rice hulls, chaff, mill sweepings," etc., "or other materials of less or of little or no feeding value without plainly stating on the label hereinbefore described, the kind and amount of such mixture," or who adulterates with any substance injurious to the health of domestic animals, or alters the State Chemist's stamp, or uses it a second time, or fails to make the sworn statement as to annual sales as required, is guilty of a misdemeanor and is subject to fine (§ 6).

The State Chemist and his deputies are empowered to procure from any lot or package of the described feeding stuffs offered for sale or found in Indiana a quantity not exceeding two pounds, to be drawn during reasonable

business hours, or in the presence of the owner or his representatives (§ 7), and it is made a misdemeanor to interfere with such inspection and sampling (§ 8). He is also authorized to prescribe and enforce regulations as he may deem necessary to carry the act into effect; and he may refuse "the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted for concentrated commercial feeding stuffs."

The evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals, a matter of great importance to the people of the State. Its requirements were directed to that end, and they were not unreasonable. It was not aimed at interstate commerce, but without discrimination sought to promote fair dealing in the described articles of food. The practice of selling feeding stuffs under general descriptions gave opportunity for abuses which the legislature of Indiana determined to correct, and to safeguard against deception it required a disclosure of the ingredients contained in the composition. The bill complains of the injury to manufacturers if they are forced to reveal their secret formulas and processes. We need not here express an opinion upon this question, in the breadth suggested, as the statute does not compel a disclosure of formulas or manner of combination. It does demand a statement of the ingredients, and also of the minimum percentage of crude fat and crude protein and of the maximum percentage of crude fiber, a requirement of obvious propriety in connection with substances purveyed as feeding stuffs.

The State cannot, under cover of exerting its police powers, undertake what amounts essentially to a regulation of interstate commerce, or impose a direct burden upon that commerce. *Railroad Co.* v. *Husen*, 95 U. S.

465, 475; *Walling* v. *Michigan*, 116 U. S. 446; *Bowman* v. *Chicago &c. Ry. Co.*, 125 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; *Minnesota* v. *Barber*, 136 U. S. 313; *Brimmer* v. *Rebman*, 138 U. S. 78; *Scott* v. *Donald*, 165 U. S. 58; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 13; *Houston & Texas Central R. R. Co.* v. *Mayes*, 201 U. S. 321; *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328; *Adams Express Co.* v. *Kentucky*, 214 U. S. 218. But when the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. *Plumley* v. *Massachusetts*, 155 U. S. 461; *Hennington* v. *Georgia*, 163 U. S. 299, 317; *N. Y., N. H. & H. Ry. Co.* v. *New York*, 165 U. S. 628; *Chicago, M. & St. P. Ry. Co.* v. *Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345; *Reid* v. *Colorado*, 187 U. S. 137; *Pennsylvania R. R. Co.* v. *Hughes*, 191 U. S. 477; *Crossman* v. *Lurman*, 192 U. S. 189; *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Asbell* v. *Kansas*, 209 U. S. 251, 254–256; *Chicago, R. I. & P. Ry. Co.* v. *Arkansas*, 219 U. S. 453.

In *Plumley* v. *Massachusetts*, a law of that Commonwealth was sustained which had been passed "to prevent deception in the manufacture and sale of imitation butter." The article, for the sale of which the plaintiff in error was convicted in the state court, had been received by him from the manufacturers in Illinois, as their agent, and had been sold in Massachusetts in the original package. The court said (*supra*, pp. 468, 472), referring to the purpose and effect of the statute: "He is only forbidden to practise, in such matters, a fraud upon the general public. The statute seeks to suppress false pretences and to promote fair dealing in the sale of an article of food. It

compels the sale of oleomargarine for what it really is, by preventing its sale for what it is not. Can it be that the Constitution of the United States secures to any one the privilege of manufacturing and selling an article of food in such manner as to induce the mass of people to believe that they are buying something which, in fact, is wholly different from that which is offered for sale? Does the freedom of commerce among the States demand a recognition of the right to practice a deception upon the public in the sale of any articles, even those that may have become the subject of trade in different parts of the country? . . . Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one State to another State. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the States."

In *Patapsco Guano Co.* v. *North Carolina, supra,* the court had before it a statute of North Carolina relating to fertilizing materials. It provided: "Every bag, barrel or other package of such fertilizers or fertilizing materials as above designated offered for sale in this State shall have thereon plainly printed a label or stamp, a copy of which shall be filed with the Commissioner of Agriculture, together with a true and faithful sample of the fertilizer or fertilizing material which it is proposed to sell, . . . and the said label or stamp shall truly set forth the name, location and trade-mark of the manufacturer; also the chemical composition of the contents of such package, and the real percentage of any of the following ingredients asserted to be present, to wit, soluble and precipitated phosphoric acid, which shall not be less than eight per cent; soluble potassa, which shall not be less than one per cent; ammonia, which shall not be less than two per cent, or its equivalent in nitrogen; together with the date of its analyzation, and that the requirements of the law have

been complied with; and any such fertilizer as shall be ascertained by analysis not to contain the ingredients and percentage set forth as above provided shall be liable to seizure and condemnation." A charge of twenty-five cents per ton on such materials was laid for the purpose of defraying the expenses connected with the inspection; and the department of agriculture was authorized to establish an experiment station and to employ an analyst, whose duty it was to analyze such fertilizers and products as might be required by the department and to aid so far as practicable in suppressing fraud in their sale.

The court upheld the statute, saying (*supra*, p. 357): "Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, and also when, although operating on articles brought from one State into another, they provide for inspection in the exercise of that power of self-protection commonly called the police power." After referring to the decision in *Plumley* v. *Massachusetts*, *supra*, the court continued (pp. 358, 361): "Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the State to intervene. Laws providing for the inspection and grading of flour, the inspection and regulation of weights and measures, the weighing of coal on public scales, and the like, are all competent exercises of that power, and it is not perceived why the prevention of deception in the adulteration of fertilizers does not fall within its scope. . . . The act of January 21, 1891, must be regarded, then, as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the State, and the charge of twenty-five cents per ton as intended merely to defray the cost of such inspection. It being competent for the State to pass laws of this character, does the re-

quirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce. In any view, the effect on that commerce is indirect and incidental, and 'the Constitution of the United States does not secure to any one the privilege of defrauding the public.'"

It cannot be doubted that, within the principle of these decisions, and of the others above cited, the State of Indiana—assuming for the present that there was no conflict with Federal legislation—was entitled, in the exercise of its police power, to require the disclosure of the ingredients contained in the feeding stuffs offered for sale in the State, and to provide for their inspection and analysis. The provisions for the filing of a certificate, for registration and for labels, were merely incidental to these requirements and were appropriate means for accomplishing the legitimate purpose of the act. It is said that the statute permits the State, through its officials, to set up arbitrary standards governing conditions of manufacture. But it does not appear that any arbitrary standard has been set up, or that there has been any attempt to enforce one against the complainant. (See *Western Union Telegraph Co.* v. *Richmond*, 224 U. S. 160, 168.) The complainant has declined to file the statement and to affix the labels containing the disclosure of ingredients for which the statute provides, and instead he resorts to this suit.

The contention is made that the statute is a disguised revenue measure, but on a review of its provisions we find no warrant for such a characterization of it. The bill sets forth no facts whatever to show that the charge for stamps is unreasonable in its relation to the cost of inspec-

tion, and certainly it cannot be said that aught appears "to justify the imputation of bad faith and change the character of the act." *Patapsco Guano Co.* v. *North Carolina, supra; McLean* v. *Denver & Rio Grande R. R. Co., supra; Red "C" Oil Co.* v. *North Carolina*, 222 U. S. 380, 393. With respect to the requirement of an advance payment for stamps, to the value of five dollars, to accompany the certificate, we need not say more than that the complainant is plainly not prejudiced, in view of the alleged extent of his sales.

Second. The question remains whether the statute of Indiana is in conflict with the act of Congress known as the Food and Drugs Act of June 30, 1906 (34 Stat. 768, c. 3915). For the former, so far as it affects interstate commerce even indirectly and incidentally, can have no validity if repugnant to the Federal regulation. *Reid* v. *Colorado*, 187 U. S. 137, 146, 147; *Asbell* v. *Kansas*, 209 U. S. 251, 256, 257; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 378; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424, 436.

The object of the Food and Drugs Act is to prevent adulteration and misbranding, as therein defined. It prohibits the introduction into any State from any other State "of any article of food or drugs which is adulterated or misbranded, within the meaning of this act." The purpose is to keep such articles "out of the channels of interstate commerce, or, if they enter such commerce, to condemn them while being transported or when they have reached their destinations, provided they remain unloaded, unsold or in original unbroken packages." *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, 54. To determine the scope of the act with respect to feeding stuffs we must examine its definitions of the adulteration and misbranding of food, the term "food" including "all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or com-

pound" (§ 6). These definitions are found in §§ 7 and 8, which are set forth in the margin.[1]

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[1] SEC. 7. That for the purposes of this Act an article shall be deemed to be adulterated: . . .

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health: *Provided*, That when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of such preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

SEC. 8. That the term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

That for the purposes of this Act an article shall also be deemed to be misbranded: . . .

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in

It will be observed that in its enumeration of the acts, which constitute a violation of the statute, Congress has not included the failure to disclose the ingredients of the article, save in specific instances where, for example, morphine, opium, cocaine, or other substances particularly mentioned, are present. It is provided that the article "for the purposes of this Act" shall be deemed to be misbranded if the package or label bear any state-

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whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucane, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: *Provided*, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: *Provided*, That the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: *And provided further*, That nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding.

ment, design or device regarding it or the ingredients or substances it contains, which shall be false or misleading (§ 8). But this does not cover the entire ground. It is one thing to make a false or misleading statement regarding the article or its ingredients, and it may be quite another to give no information as to what the ingredients are. As is well known, products may be sold, and in case of so-called proprietary articles frequently are sold, under trade names which do not reveal the ingredients of the composition and the proprietors refrain from revealing them. Moreover, in defining what shall be adulteration or misbranding for the purposes of the Federal act, it is provided that mixtures or compounds known as articles of food under their own distinctive names, not taking or imitating the distinctive name of another article, which do not contain "any added poisonous or deleterious ingredients" shall not be deemed to be adulterated or misbranded if the name be accompanied on the same label or brand with a statement of the place of manufacture (§ 8).

Congress has thus limited the scope of its prohibitions. It has not included that at which the Indiana statute aims. Can it be said that Congress, nevertheless, has denied to the State, with respect to the feeding stuffs coming from another State and sold in the original packages, the power the State otherwise would have to prevent imposition upon the public by making a reasonable and non-discriminatory provision for the disclosure of ingredients, and for inspection and analysis? If there be such denial it is not to be found in any express declaration to that effect. Undoubtedly Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a state law enacted for these purposes. But it did not so declare. There is a proviso in the section defining misbranding for the purposes of the act that "nothing in this Act shall be construed" as requiring manufacturers of

proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas "except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding" (§ 8). We have already noted the limitations of the provisions referred to. And it is clear that this proviso merely relates to the interpretation of the requirements of the act, and does not enlarge its purview or establish a rule as to matters which lie outside its prohibitions.

Is, then, a denial to the State of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Northern Pacific Ry. Co.* v. *Washington*, *supra*; *Southern Ry. Co.* v. *Reid*, *supra*.

But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration. *Chicago &c. Ry. Co.* v. *Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613; *Reid* v. *Colorado*, 187 U. S. 137; *Pennsylvania R. R. Co.* v. *Hughes*, 191 U. S. 477; *Crossman* v. *Lurman*, 192 U. S. 189; *Asbell* v. *Kansas*, 209 U. S. 251; *Northern Pacific Ry. Co.* v. *Washington*, 222

U. S. 370, 379; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424, 442.

In *Missouri, Kansas & Texas Ry. Co.* v. *Haber, supra*, the Supreme Court of Kansas had affirmed a judgment against the railway company for damages caused by its having brought into the State certain cattle alleged to have been affected with Texas fever which was communicated to the cattle of the plaintiff. The recovery was based upon a statute of Kansas which made actionable the driving or transporting into the State of cattle which were liable to communicate the fever. It was contended that the act of Congress of May 29, 1884, c. 60 (23 Stat. 31), known as the Animal Industry Act, together with the act of March 3, 1891, c. 544 (26 Stat. 1044), appropriating money to carry out its provisions, and § 5258 of the Revised Statutes, covered substantially the whole subject of the transportation from one State to another State of live stock capable of imparting contagious disease, and therefore that the State of Kansas had no authority to deal in any form with that subject. The act of 1884 provided for the establishment of a bureau of animal industry, for the appointment of a staff to investigate the condition of domestic animals and for report upon the means to be adopted to guard against the spread of disease. Regulations were to be prepared by the commissioner of agriculture and certified to the executive authority of each State and Territory. Special investigation was to be made for the protection of foreign commerce and the Secretary of the Treasury was to establish such regulations as might be required concerning exportation. It was provided that no railroad company within the United States, nor the owners or masters of any vessel should receive for transportation, or transport, from one State to another any live stock affected with any communicable disease, nor should any one deliver for such transportation, or drive on foot or transport in private conveyance from

one State to another any live stock knowing them to be so affected. It was made the duty of the commissioner of agriculture to notify the proper officials or agents of transportation companies doing business in any infected locality of the existence of contagion; and the operators of railroads, or the owners or custodians of live stock within such infected district, who should knowingly violate the provisions of the act were to be guilty of a misdemeanor punishable by fine or imprisonment.

The court held that this Federal legislation did not override the statute of the State; that the latter created a civil liability as to which the Animal Industry Act of Congress had not made provision. The court said (*supra*, pp. 623, 624):

"May not these statutory provisions stand without obstructing or embarrassing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. *Sinnot* v. *Davenport*, 22 How. 227, 243. . . . Whether a corporation transporting, or the person causing to be transported from one State to another cattle of the class specified in the Kansas statute, should be liable in a civil action for any damages sustained by the owners of domestic cattle by reason of the introduction into their State of such diseased cattle, is a subject about which the Animal Industry Act did not make any provision. That act does not declare that the regulations established by the Department of Agriculture should have the effect to exempt from civil liability one who, but for such regulations, would have been liable either under the general principles of law or under some state enactment for damages arising

out of the introduction into that State of cattle so affected. And, as will be seen from the regulations prescribed by the Secretary of Agriculture, that officer did not assume to give protection to any one against such liability."

In *Reid* v. *Colorado, supra*, the question arose under a statute of Colorado which had been passed to prevent the introduction into the State of diseased animals. The statute made it a misdemeanor for any one to bring into the State between April 1 and November 1 any cattle or horses from a State, Territory or county south of the 36th parallel of north latitude, unless they had been held at some place north of that parallel at least ninety days prior to importation, or unless the owner or person in charge should procure from the State Veterinary Sanitary Board a certificate, or bill of health, to the effect that the cattle or horses were free from all infectious or contagious diseases and had not been exposed thereto at any time within the preceding ninety days. The expense of any inspection in connection therewith was to be paid by the owner.

The plaintiff in error had been convicted of bringing cattle into the State in violation of the statute. There was no proof in the case that the particular cattle had any infectious or contagious disease, but it did appear that they were brought from Texas, south of the 36th parallel, without being held or inspected as the statute required. Its provisions were ignored altogether as invalid legislation. When the plaintiff in error refused assent to the state inspection he showed to the authorities a certificate signed by an assistant inspector of the Federal bureau of animal industry who certified that he had carefully inspected the cattle in Texas and found them free from communicable disease. It was insisted that the statute of Colorado was in conflict with the Animal Industry Act of Congress, but the court sustained the state law for the

reason that, although the two statutes related to the same general subject, they did not cover the same ground and were not inconsistent with each other.

The court thus emphasized the general principle involved (*supra*, p. 148): "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.'" And in the course of its review of the subjects embraced in the Federal legislation the court said (pp. 149, 150):

"Still another subject covered by the act is the driving on foot or transporting from one State or Territory into another State or Territory, or from any State into the District of Columbia, or from the District into any State, of any live stock *known* to be affected with any contagious, infectious or communicable disease. But this provision does not cover the entire subject of the transporting or shipping of diseased live stock from one State to another. The owner of such stock, when bringing them into another State, may not know them to be diseased; but they may, in fact, be diseased, or the circumstances may be such as fairly to authorize the State into which they are about to be brought to take such precautionary measures as will reasonably guard its own domestic animals against danger from contagious, infectious or communicable diseases. The act of Congress left the State free to cover that field by such regulations as it deemed appropriate, and which only incidentally affected the freedom of interstate commerce. Congress went no farther than to make it an

offence against the United States for any one *knowingly* to take or send from one State or Territory to another State or Territory, or into the District of Columbia, or from the District into any State, live stock affected with infectious or communicable disease. The Animal Industry Act did not make it an offence against the United States to send from one State into another live stock which the shipper did not know were diseased. The offence charged upon the defendant in the state court was not the introduction into Colorado of cattle that he knew to be diseased. He was charged with having brought his cattle into Colorado from certain counties in Texas, south of the 36th parallel of north latitude, without said cattle having been held at some place north of said parallel of latitude for at least the time required prior to their being brought into Colorado, and without having procured from the State Veterinary Sanitary Board a certificate or bill of health to the effect that his cattle—in fact— were free from all infectious or contagious diseases, and had not been exposed at any time within ninety days prior thereto to any such diseases, but had declined to procure such certificate or have the inspection required by the statute. His knowledge as to the actual condition of the cattle was of no consequence under the state enactment or under the charge made.

"Our conclusion is that the statute of Colorado as here involved does not cover the same ground as the act of Congress and therefore is not inconsistent with that act; and its constitutionality is not to be questioned unless it be in violation of the Constitution of the United States, independently of any legislation by Congress."

In *Asbell* v. *Kansas, supra,* the plaintiff in error had been convicted under a statute of the State of Kansas which made it a misdemeanor to transport cattle into the State from any point south of the south line of the State, except for immediate slaughter, without having first

caused them to be inspected and passed as healthy by the proper state officials or by the bureau of animal industry of the Interior Department of the United States. The court held that the statute was a valid exercise of the power of the State unless it were in conflict with the act of Congress. It appeared that since the decision in *Reid* v. *Colorado*, *supra*, Congress had provided that where an inspector of the bureau of animal industry had issued a certificate that he had inspected live stock and found them free from communicable disease they should be transported into any State or Territory without further inspection or the exaction of fees of any kind, except such as might be required by the Secretary of Agriculture. But as the law of Kansas recognized the Federal certificate, a conflict with the act of Congress was avoided, and hence the conviction under the state law was sustained.

Applying these established principles to the present case, no ground appears for denying validity to the statute of Indiana. That State has determined that it is necessary in order to secure proper protection from deception that purchasers of the described feeding stuffs should be suitably informed of what they are buying and has made reasonable provision for disclosure of ingredients by certificate and label, and for inspection and analysis. The requirements, the enforcement of which the bill seeks to enjoin, are not in any way in conflict with the provisions of the Federal act. They may be sustained without impairing in the slightest degree its operation and effect. There is no question here of conflicting standards, or of opposition of state to Federal authority. It follows that the complainant's bill in this aspect of the case was without equity.

Other objections urged by the bill to the validity of the statute, save so far as they may be deemed to involve the questions that have already been considered, have not been pressed in argument and need not be discussed.

Recurring to the contention that the product of the complainant is not within the statute, it is evident that, assuming the validity of the enactment, the complainant showed no ground for resorting to equity, as the nature of the composition must be determined according to the fact in the course of due proceedings for that purpose.

The demurrer was properly sustained.

Affirmed.